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Current History

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How equitable is the American system of justice? How does it operate? How can it be made more effective? This issue is the first of a two-issue symposium on criminal justice in America. In our introductory overview, we are reminded that "Americans early assured themselves that justice should forever be in the province of ordinary people." Thus, in our criminal justice system, "plain Americans of modest talent administer justice to their fellows."

Criminal Justice in the American Democracy

By Ralph W. England
Professor of Sociology and Anthropology, University of Rhode Island

The administration of the complex set of procedures that we call *criminal justice* is inherently thorny and difficult. Law enforcement and all it entails impinge directly on the deeply prized values of life, freedom and human dignity, because unlike most government operations the administration of criminal justice requires the forcible and unwelcome intrusion into the affairs and fortunes of all who are drawn into the machinery.

This intrusion—ranging in its effects from the mild shock of finding on one's windshield a citation for overparking to having one's life extinguished by the public executioner—is even more resented when it is believed to contain elements of injustice. And this belief can be easily adopted: the public servants who impersonally visit the law's authority upon us are outside our usual circles of familiar, friendly faces—these policemen, fine-collectors, clerks, magistrates, bailiffs, court attendants, judges, prosecutors, sheriffs, probation officers, wardens, guards, prison shop supervisors, social workers and parole agents. An individual who must perforce be processed by some or all of this motley crowd feels that he is at the mercy of strangers about whose virtue—or lack thereof—he knows nothing. What stake can this band of unknown beings have in being fair, sympathetic, honest and kindly? Should it not indeed be anticipated that they will be revealed as arbitrary, callous, corrupt and punitive?

Ours is an immense, varied, dynamic and politically decentralized nation. Like most of our public institutions, the institutions of justice are shaped in considerable measure by these national characteristics. Some fundamental features of our ways of administering justice are of English origin: the common law felonies, habeas corpus, trial by jury, segments of our Bill of Rights, local control of police, the contest method of getting at the truth in trials, the assumption of innocence. Other basic elements—judicial independence under the division-of-powers doctrine, judicial review of legislation, most of the Bill of Rights—were post-Revolution adoptions. Thus the forms and processes of our American institutions of criminal justice are the products of our English legal heritage and our own distinctive notions of democracy. These notions in turn are a mixture of concepts taken from sophisticated Enlightenment political philosophers and the ideas of a rural and small-town citizenry, newly freed from the tyranny and exploitation of an England ruled by a hereditary aristocracy.

Our forefathers were determined that their new country would follow the doctrine that all men are created equal and are endowed with God-given rights, guarding against a drift of power that could recreate an aristocracy of wealth and privilege. As a result, they adopted such devices as the separation of powers, a bicameral Congress whose biennially elected lower house would be flexibly responsive to local interests, and the establishment of explicit limits on the powers of the federal government. Additional lim-

itations were spelled out in the Bill of Rights, the first ten amendments to the constitution.

For our purposes, the tenth amendment is the most important, for it provided that powers not constitutionally delegated to the United States, nor constitutionally prohibited to the states "are reserved to the States respectively or to the people." In effect, this provision gave each state the right to create its own criminal codes, court systems and agencies of punishment.

Thus there emerged a federal system of criminal justice to handle matters involving violations of the laws passed by Congress, and as many state systems as there are states. Congress' criminal laws are necessarily limited to those domains of authority accorded the federal government: interstate commerce, wars, currency, postal services, maritime matters, and so on. There is no intrinsic grandeur about the federal administration of justice; it simply parallels, in separate spheres of responsibility, those of the several states. The federal instruments include felony and misdemeanor criminal statutes, a lower magistracy ("commissioners"), trial and appellate courts, prosecutors ("United States Attorneys"), and correctional institutions and agencies.

Most federal prosecutions arise from the same homely crimes handled by county courts, save that they were committed in federal spheres: robbery (of a post office); burglary (of a bank); assault (on a government employee at work); larceny (from a federally bonded warehouse); rape (on a government reservation); fraud (in federal tax matters); auto theft (when the car is driven across a state line). Such crimes as selling military secrets, smuggling heroin, treason, and airplane hijacking, while fine television fare, actually comprise only a small portion of federal criminal cases. Most crimes in this country are violations of state and local laws, and most criminal proceedings and correctional efforts occur under state and local auspices.

Because our state constitutions are obliged to conform to the "justice" provisions of the federal constitution, the expansion of our nation from the original states westward and southward meant the creation of similar (but by no means identical) instruments of justice throughout the United States. Contrasting versions of these instruments so abound among our 50 states that to speak of an "American system of justice" is to direct attention only to broad constitutional principles and to risk overlooking the significance of innumerable state and local variants within these limitations. The guiding light of constitutional guarantees and protections is here refracted, there dimmed, elsewhere brightened, depending upon the particular character of the state and local agencies dispensing justice and the kinds of people employed in them.

THE POLICE

There are well over 230,000 municipal, county and state police officers in the United States, organized into several thousand departments whose sizes are as small as single village constables answerable to some local official and as large as the army of 27,000 that polices New York City. Our American tradition of severely decentralized police services—itself derived from a thirteenth century English edict that "watching and warding" is the responsibility of the local citizenry alone—continues to be among the most jealously guarded prerogatives of our towns, municipalities and counties. Thus the initiatory level of the delivery of justice is highly colored by local values, attitudes, ethnic and racial make-up, and by unofficial understandings about which statutes in the state's criminal code and in local ordinances are to come to the attention of law enforcement officials.

The twentieth century has seen substantial improvement in the overall quality of policemen and their services. The upgrading began shortly before 1900 with the move toward replacement in state and local governments of the scandalous political boss spoils rule by the merit system for employing civil servants. Progress was not notably rapid, but many blatantly illegal police practices which effectively denied constitutional rights, such as keeping arrested persons *incommunicado,* using physical brutality in backroom interrogations, shuttling prisoners between station houses to evade service of writs of habeas corpus, to cite just three, happily have diminished from routine to rare.

But with the best intentions that police operations should respect the citizen's constitutional guarantees, vast qualitative differences among police bodies exist in our huge and heterogeneous country; these differences have the effect of unevenly distributing that portion of justice that is allocated, as it were, to the police.

Poorly trained officers can botch badly their responsibility for the initial collection and preservation of physical evidence and witnesses' statements at crime scenes. Policemen who are not fully literate tend to produce skimpy or confusing written reports of recordable incidents; officers holding ignorant beliefs about minority groups ("all black girls are promiscuous") may be unfairly skeptical toward certain complaints made by them (e.g., a charge of rape); officers too dull to learn the pertinent laws may inappropriately arrest (or fail to arrest) suspects.[1] Because a significant portion of police activity yearly draws vast numbers of citizens into the machinery of justice as suspects—at the very least inconveniencing

[1] To avoid false arrest troubles, one small police department known to the writer requires its patrolmen to radio the duty sergeant for permission before making an arrest.

them by breaking into their everyday pursuits and at the most putting their freedom in ultimate peril—the quality of justice at this level has important consequences.

THE COURTS

Like the police, our judicial institutions for handling accused persons are deeply rooted in English history, where they emerged in forms appropriate to a simple agricultural society. For centuries, misdemeanor cases were "tried" before a parish officer known as the "conservator of the peace," while felony matters were within the jurisdiction of the more august shire courts of quarter sessions. This arrangement was imported to colonial America where, in its essentials, it still exists. The conservator became our justice of the peace, while the parish and the shire became the township and the county.

Uncounted justices of the peace (most of them elected to two- or four-year terms as township officers) and their citified counterparts in the form of magistrates, police court judges and so on, have authority to punish minor misdemeanants by reprimands, fines, or short sentences to county institutions (usually jails or houses of correction). Nationwide, these judges process thousands of such cases daily. The constitutional guarantee that liberty and property shall not be taken except through due process is possibly violated more in these operations than anywhere else in the administration of justice. Accused persons are hustled through these often overcrowded courts in hearings averaging mere minutes. And most of the justices, by ancient law and custom and because of our democratic insistence that all adult citizens are qualified to hold elective offices, need have no knowledge of the law. These lower courts have still another important role: persons accused of felonies are first processed here (unless they waive this preliminary step); the judge, often aided by an attending staff lawyer of the county prosecutor's office, is required to dismiss such persons or to order them held for higher processing. The justice of the peace is thus the gatekeeper on the road to the county trial courts. These officials are almost always active members of local political organizations and thereby highly susceptible to political pressures in reaching their decisions. Thus they are sometimes hard put to dispense justice impartially, let alone with due regard for constitutional rights.

Known variously among the several states as courts of quarter sessions, oyer and terminer, circuit, criminal or county are our tribunals having original jurisdiction over more serious misdemeanors and over all felonies. In a few states, county judges are elected by the voters to two-, four- or six-year terms, the candidates usually sponsored by local political bodies. The widely adopted statutory requirement that judges of county courts and higher be lawyers (or at least be "learned in the law") stands as one of the very few exceptions we make to our populist requirement of citizenship and a minimum age to run for public office. County and higher judgeships are thus effectively closed to most people; the judicial travesties seen in the past, especially in frontier communities where elected ignoramuses presided over drum-head trials even in capital cases, justified this sacrifice of the everyman candidacy principle.

County judges take an active part in another aspect of criminal justice, corrections. Judicial prerogative has long allowed a judge virtually unrestricted freedom to select whomever he wishes to fill the appointive positions authorized for his court. Bailiffs, clerks, secretaries, attendants and, significantly, probation officers often come and go with changes of judges. With rehabilitative intent, probation officers supervise offenders sentenced to remain under court jurisdiction as an alternative to imprisonment. Along with their elected judge, these employees are vulnerable to political influence and tend to lack the qualifications essential for effective probation work.

Juries comprise another important cog in the machinery of justice at the court level; this is the point at which members of the general public have a direct hand in deciding the fates of defendants. Each year, an estimated 1.5 million citizens serve on juries, grand and petit, criminal and civil. In addition to requirements that prospective jurors be sane, reputable, able to understand English and be 21 or older, some state laws or constitutions stipulate that they must be eligible to vote locally, own certain amounts of property or be taxpayers. Curiously, jurors are more stringently selected than are most candidates for public office. On the other hand, automatic exemption from jury duty may have the effect of winnowing away the more intelligent and better educated; teachers, clergymen, physicians, lawyers and other professional people are usually excused.

IMPRISONMENT

In law and practice, there is a sharp distinction between the use of imprisonment by counties and its use by states. In general county governments are empowered to imprison misdemeanants only, for periods not to exceed one year, in institutions operated by the county. These traditionally are *jails*,[2] whose English origins lie in a twelfth century edict that all walled towns (i.e., towns of some importance) must set up places where persons awaiting trial or punishment could be detained. By the eighteenth century, responsibility for the jail had become a duty of the shire's chief law enforcement officer, the "reeve" (hence "shire-reeve" or sheriff).

With much other political cargo, the jail and the sheriff crossed the sea with the English colonists, and

[2] Spelled "gaols" by the British, but pronounced the same.

both institutions thrive to this day. During Queen Elizabeth's reign the jail began to acquire the added responsibility of serving punitive ends, in addition to prisoners awaiting the course of justice, there were misdemeanants (who were no longer to be flogged or placed in stocks as punishment) who were jailed to deprive them of their freedom for periods of days or months. The jail thus acquired (and retains) its awkward dual function of punishing minor wrongdoers while holding other persons who are awaiting legal disposition.[3]

Some populous counties and even cities within them maintain houses of correction, county farms and so on for convicted misdemeanants, but county jails in most places are under the sheriff's office. Typically an elected official, the sheriff appoints his staff—sometimes numbering several score—from among the politically faithful, with due regard for the job needs of his relatives. In many rural counties, the *per diem* fee system—bane of the early English jail—is still used, but the county instead of the prisoner now pays the fees. The centuries-old temptation for the sheriff to fiddle his expenses is still a temptation that many find hard to resist and is a traditional source of enrichment for dishonest sheriffs and their cronies.

American jails number nearly 3,000 (many are tiny and little-used); on any given day perhaps 50,000 prisoners languish in them, and in the course of a year 1.5 million or more persons experience jail stays. Numerically important, with few exceptions the jail remains deeply embedded in county politics. The best one can say about jails as instruments of justice is that most of them most of the time accept and release prisoners on proper orders and detain them in such ways that they do not often sicken or die. If performance expectations exceed these minima, if one asks that jails conform to "enlightened" penological principles, one is making demands that far exceed the jail's capacity to deliver.

Persons convicted in the county courts on felony charges and sentenced to terms of imprisonment become guests of the state, at state expense. In the historic sense, felony imprisonment is a substitute for hanging. Until late in the eighteenth century, felons in England were eligible for the scaffold, with exile, mutilation or branding as possible mitigations of the extreme penalty. Though stirrings toward penal reform could be heard in England from the early 1700's, imprisonment for felony started in the former American colonies. The liberated colonists, who had endured the application of England's criminal statutes by the Crown's governors and courts, soon softened felony punishments under Americanized English law. The deprivation of liberty, which (except for very serious crimes) was seen as a severe enough penalty for a "freedom-loving" people, required the creation of places suitable for secure long-term incarceration. Following a rather horrible period of trial and error (which included such blunders as Maine's disastrous underground cells at Thomaston and Connecticut's copper mine prison near Windsor Locks) after about 1820 the states settled either for the congregate-silent prison developed at Auburn, New York, or for the solitary-confinement penitentiary originating in Philadelphia.

The former was much more widely copied, for it tended to be self-supporting; it was typified by multi-tiered, back-to-back blocks of cells, busy prison shops, and cowed convicts laboring in a silence enforced with whips.

In the 1870's came our third main form of felony imprisonment, the *reformatory,* which used vocational and academic training, promotion up a ladder of privileges as an incentive for self-improvement, and trial release before the expiration of sentence, i.e., parole. The reformatory's features were more or less generally adopted by the other two prison types in the decades following, and all three eventually acquired such amenities as counselling staffs, playing-fields, liberal visiting privileges, and work release. Today, it is only in the official names of these institutions and in the physical structures of the older ones that their original types are evidenced.

Along with this amalgamated prison (where the majority of convicts serve their sentences), today there are specialized institutions for selected prisoners: forestry camps, public works "colonies," diagnostic centers, prison farms, facilities for work-release prisoners, "open" prisons, and others. Our 50 states operate some 220 penal institutions of all types, with approximately 180,000 persons confined in them on any given day.[4] State penal institutions fulfill their historic role as efficient deprivers of liberty: few prisoners escape, and most, even "lifers," survive their imprisonment. Whether felony institutions meet their

(Continued on page 277)

[3] Including fugitives, boarders from neighboring counties, unbailed defendants, material witnesses, psychotics awaiting hospital placement, convicted felons due for transfer to a state facility.

[4] In 1973, the latest available year; federal felony prisoners that year numbered about 23,000.

Ralph W. England has been on the faculty of the University of Rhode Island since 1960. He was a United Nations consultant on prison labor (1954–1955), instructed in police training while with the University of Illinois (1955–1960), and is presently active in delinquency prevention and correctional training programs in Rhode Island. The author of numerous articles, Dr. England also has written *Prison Labor* (New York: United Nations, 1955) and, with D. R. Taft, *Criminology* (4th ed.; New York: The Macmillan Company, 1964).

". . . the police leadership must make it clear that the police are only the most visible sector of a highly fragmented criminal justice system that, for the most part, is failing to combat crime because of its disorganization at all levels."

The Development of the Urban Police

By Patrick V. Murphy
President, Police Foundation

No brief discussion of policing in the nation can do justice to all aspects of state and local law enforcement. Local policing alone is fragmented among more than 17,000 agencies, most of which serve very small communities and do not encounter the major challenges and problems that confront policing in the United States today.

To discuss the essential issues of law enforcement today is to discuss policing in our larger urban areas —in the big cities where crime is proportionately higher and where many of the great conflicts of our society are being fought. So this discussion will concentrate on policing in the cities and on the police department as an urban service agency. But first a glance backward at the origins of American policing.

The professional police department is only 122 years old in America, a relatively new institution. Beginning with the same general principles underlying the origins of professional police in England, American policing quickly diverged from the English model and developed an entirely separate style.

In both countries, there was concern about the potential threat to civil liberties from a professional police force. Both countries were determined to limit police power. In England, in 1839, Parliament passed the Metropolitan Police Act, which carefully defined police powers and subordinated the new London police to the law.[1] Fifteen years later, when America's first police department was founded in New York in 1854, its powers were subordinated not to the law, but to the people.[2]

The English model, an expression of the English character, was formal, impersonal, legal, and precise. The American model, an expression of the American character, was responsive, democratic, informal, and careless. The English police officer was to be a professional, carefully selected and well trained; the American police officer was to be an amateur, a personal police officer, close to the citizens he policed and responsive to them.

Harriet Martineau captured the difference between the two forces. The English police, she said, were "agents of a representative government appointed by responsible rulers for the public good." The American police, on the other hand, were "servants of a self-governing people, chosen by those among whom their work lies."[3]

The democratic character of American policing, in many respects the great strength of the institution, was, in other respects, a serious flaw. Although the American police department was responsive to democratic controls, it was also prey to the abuses of democratic government. During the second third of the nineteenth century, American politics began to be influenced by the waves of European immigrants who moved into American cities. Pushing aside the native-born Americans who ran things, these immigrants soon gained political control. Their instrument was the urban political machine, which depended on their votes and on which they depended for jobs and services.

By the late nineteenth century, the urban police department was a vital part of the urban political machine. It had to be. The police department was

[1] How Sir Robert Peel did it is an interesting story. It is told in Charles Reith, *A New Study of Police History* (Edinborough: Oliver and Boyd, 1956). The general conditions that led to the founding of the first professional police department are discussed in F. C. Mather, *Public Order in the Age of the Chartists* (Clifton, N.J.: Kelley, 1959).

[2] Two books have been written on America's first two police departments: James F. Richardson, *The New York Police: Colonial Times to 1901* (New York: Oxford University Press, 1970); and Roger Lane, *Policing the City: Boston, 1822–1885* (Cambridge: Harvard University Press, 1967).

[3] An interesting study is an unpublished monograph on the founding of professional police in England and America by Wilbur Miller, *Two Paths to Public Order: Police Authority in New York and London, 1830–1870.*

a major source of jobs for unskilled illiterate men, the people on whom the machine depended and who had to be rewarded with a livelihood. Whoever controlled the police controlled hundreds, even thousands of jobs—and more. Whoever controlled the police department controlled access to the polls and could decide who would vote and who would not. Whoever controlled the police department could also decide what demonstrations and rallies would be held, who could protest and against what, who would be permitted to speak in public places, and who would be permitted to violate city ordinances and laws without harassment from the authorities or fear of prosecution.[4]

THE EARLY REFORMERS

It was natural, therefore, that when the older residents who had once controlled the cities rose in counterattack against corruption, they focused a good deal of their attention on the police. Police change became an essential part of the agenda of reformers at the turn of the century.[5] Reformers sponsored hearings and investigations in many American cities. Literature of the day described the sorry condition of police departments and the need to improve them.

Reformers were scandalized by the condition of American urban police departments. But although they wanted to improve the police, they also wanted to control the police—or at least to deprive the machines of their control. They could not actually admit that goal, so they argued that the police department was in need of a fundamental recasting.

The police were given a new and different purpose. Whereas during the early period of development police regarded service as their primary objective, the reformers emphasized crime prevention, advocated greater police involvement in preventing illegal behavior, and called for a streamlining of the police function, limiting police work to that which was related to crime.

Based on these premises, the reformers created an agenda of great persuasiveness: the police were established under civil service; the police chief received tenure; police departments were centralized; standards of education were raised; training was introduced; and many urban crime prevention units were created.[6]

By 1930, the big-city police department had changed in some important respects. It was more centralized, more military in organization and style, with more clearly defined objectives. But many police departments were still tied to the political machines of their cities. They were badly organized and run. Personnel were still underpaid, poorly selected, and badly trained.[7]

At the same time, a new, different generation of reformers was emerging. The first period of reform had been stimulated from outside the police field by people interested in political control; the second period was stimulated from inside the field by people interested only in police improvement. The first generation had been composed largely of native American aristocrats; the new one was composed largely of police professionals, one of the most talented groups of police leaders ever to serve at the same time: Bruce Smith at the Institute of Public Administration; August Vollmer, former police chief in Berkeley, California, and a noted theoretician; Louis Valentine in New York; William Parker in Los Angeles; O. W. Wilson in Chicago; Herbert Jenkins in Atlanta; Stanley Schrotel in Cincinnati, to name a few. They were self-conscious reformers, and their agenda for reform was, in many respects, similar to that of the earlier generation. But they were far more successful in effecting change.

Focusing on the organizational deficiencies of police departments, on the substandard quality of personnel and conditions, and on uncertainty about the police purpose, the reformers began the slow, still incomplete job of improving the police organization, upgrading the personnel, and divesting their departments of responsibilities that could be performed elsewhere.[8]

The first period of change had altered the perception of the police from a responsive, democratic, social service agency to an army, responsible for the prevention of crime, the apprehension of criminals, and the enforcement of the law. The new period changed the police organization and its operations to improve policing. All police departments were not transformed; but even those that were not were deeply affected, because a group of able professionals

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[4] This is described in Lyle Dorsett, *Pendergast Machine* (New York: Oxford University Press, 1968); Seymour Mandelbaum, *Boss Tweed's New York* (New York: John Wiley & Sons, 1964); and Zane Miller, "Boss Cox's Cincinnati," *Journal of American History*, vol. 54 (March, 1968), p. 823.

[5] These conflicts and subsequent conflicts about police and their effects are described in a book to be published in 1977—Robert M. Fogelson, *Big City Police: An Essay on Institutional Change, 1890–1970.*

[6] The reformers wrote a great deal of this in journals and books. An example is Arthur Wood, *Policeman and Public* (1919) (New York: Arno Press, reprinted 1971).

[7] The deficiencies of the police were discussed in detail by the first national crime commission, the National Commission on Law Observance and Enforcement, *Report on the Police* (1931) (New York: Arno Press, reprinted, 1971). Among those deficiencies were poor personnel, unscientific administration, incompetent leadership, inefficiency, and the corrupt influences of politics.

[8] Much of this is discussed in August Vollmer, *The Police and Modern Society* (1936) (Washington, D.C.: Consortium Press, reprinted 1969). It is codified in O. W. Wilson, *Police Administration*, 3d. ed. (New York: McGraw-Hill, 1972).

had formulated an ideal of how police departments ought to be run—an ideal often at odds with the way they had always been run.

Their ideal was clear. The modern police department was to become a streamlined organization that could close all but a few of its district stations, relying instead on the automobile. Except in the most dangerous parts of a city, patrol officers would ride alone, rather than in two-person cars, in order to be more "efficient." When there were no calls to answer, officers would drive within specific assigned areas, called sectors or beats. Sometimes they would drive in random patterns; sometimes they would follow predesigned patterns, scrutinizing alleys and stores and paying particular attention to places with a history of crime, called "hazards." Several times during a tour, dispatchers would send patrol officers to answer a citizen complaint or a call for service.

The police officer who exemplified the reformers' ideal for the modern police department was 24 years old, white, and male. He held a high school diploma before entering police service, and he might have completed a year or two of college. In his entrance examination, he was required to score acceptably on an intelligence test, to be at least 5′9″ tall with proportional weight, to be free of a criminal record, and to be physically agile. After being accepted by a department, he would spend 12 weeks learning state and local laws, the history and rules of the department, and the skills required to perform police work.

In dealing with citizens, this ideal patrolman was polite, helpful, and never emotional. He was taught to be detached and remote and never to take sides. All citizens were to be treated identically. In dealing with the police organization, the patrol officer was to be deferential, to follow the rules prescribed in the rulebook, to refer important decisions upward through the "chain of command," and to follow orders without question.

To a great extent, the reformers implemented what they advocated.[9] But their style of policing was to fall under criticism.

The 1960's were years of sharp social protest, much of which disrupted the streets and college campuses and much of which became a police problem. Civil rights demonstrations on the streets and in other public places, a vigorous protest movement against a highly unpopular war, semiviolent demonstrations against social institutions, violent protests against real or perceived social abuses, all became matters of police concern. During the 1960's, also, the incidence of all kinds of crime began to increase greatly.

At the same time, people who relied on the police to provide social services began to make far greater demands, and the volume of noncriminal calls for service began to climb. These calls came from people who, during World War II and the postwar period, had migrated from farms to cities. Many of them were unskilled, uneducated and unsophisticated. Because they had no other resources, they tended to call the police for every kind of problem, and to ask police intervention in situations ranging from marital conflict to sickness to lost keys.

This may surprise the middle class reader, because even today most middle class citizens come into contact with the police only occasionally, perhaps if they are stopped for traffic violations or are victims of crime and call for assistance. But other citizens, particularly minorities and the poor, regard the police as the primary providers of social services like medical assistance or the arbitration of domestic disturbances. A middle class person in need of medical attention calls a doctor—the poor call the police; a middle class couple with marital problems visit a counselor—the poor consult the police. The vital social role performed by the police has been well understood by the poor, but has often been obscured from the affluent.

CRITICISM

The problems of the 1960's called attention to the police as an important social institution and led citizens to ask how well police departments were doing their job. Generally, they believed that the police were doing rather poorly.

In some respects, that was true. Police departments were not an effective means of delivering services. With all their attention to organizational improvement, many police departments were still as inefficient as they had always been. Even departments that had made great progress did not always treat people with civility and dignity, and others did not adhere to the high standards of integrity and performance their leaders were advocating.

Much criticism of the police was unfair and unreasonable. Many observers criticized the police for doing well that which they had spent an entire generation learning how to do. The social context had changed since the second reform movement. Earlier, communities had demanded vigorous crime prevention tactics such as stop-and-frisk and saturation patrol; now they were announcing that those tactics were abrasive to relations with minority groups. Communities had once wanted highly mobile, centralized, efficient departments; they now decreed that departments should be decentralized, responsive, and less mobile.

For decades, police reformers had advocated higher entrance and educational standards for police; now many citizens' groups were lobbying for lower stan-

[9] One account of this is contained in a still unpublished doctoral dissertation by J. G. Woods, *The Progressives and the Police*, a study of the transformation of the Los Angeles Police Department.

dards in order to make police departments more representative of their communities. For a generation, people had applauded the cool, detached style personified by "Dragnet" and a host of television programs that followed it; now they wanted a more "human," more involved police officer. Reformers had long advocated freeing police from political control; now they wanted police departments to be more accountable to the public through their elected officials.

A series of presidential commissions studied the police: The President's Commission on Law Enforcement and the Administration of Justice in 1967; the National Advisory Commission on Civil Disorders in 1968; the National Commission on the Causes and Prevention of Violence in 1969; and the President's Commission on Campus Unrest in 1970.

Each of those commissions, in one way or another, dealt with the problems and deficiencies of the police and made recommendations for improvement. They were joined by investigations conducted in a dozen cities, some looking into police corruption and others into broader police problems.

At first, police reacted to criticisms by championing some of the earlier reforms and advocating more of them. They denied that reforms designed to promote efficiency were a source of conflict, and urged that adoption of these reforms be accelerated.

A second response was the establishment within police departments of mechanisms for citizens to use when they wanted to complain about police behavior. Generally, these mechanisms were community relations units. Many failed to satisfy those who were critical of police practices.

A third response from police departments was to resist some of the new reforms, especially those that they perceived as threatening to police autonomy: for example, the demand that exclusive control be taken away from police departments and given to civilian groups—civilian review boards, neighborhood policy boards, and other outside groups. In almost every instance, those proposals were beaten back by the growing political power of the police.

But change did occur in the course of the troubled decade. Some change was stimulated by the report of the President's Commission in 1967, which tried to meld traditional, professional reforms with newer demands for accountability. Some change was stimulated by the creation of a large government grant program that began to finance some reforms. And change was also stimulated by the gradual entrance into leadership positions of people who were less committed to the efficiency model of policing than the earlier generation, and who were more willing to experiment with new techniques of policing and new organizational forms.

MAJOR CURRENT ISSUES

Although the convulsive conflict of the 1960's has subsided, a period of profound reassessment continues to focus on the police as an institution. Indeed, relaxation of some of the great tension under which the police have been functioning during the past decade seems to have made it possible to ask more difficult questions. Basic questions are considered. Who controls the police? What are they for? What kinds of people should become police officers? What should they do? How ought police departments be organized?[10]

At the heart of this questioning is the issue of the police function. It has been assumed during this century that the principal function of the police is to prevent crime, to investigate those crimes that do occur, and to apprehend those responsible for the crimes. But the vast majority of most police officers' time is spent on noncriminal problems.

Generally, police have declared that if they could be freed from their noncriminal responsibilities they would be able to apply themselves more fully and more successfully to crime control. But more recently there has been an increasing recognition that the police undertake noncriminal responsibilities because they are the only people who *can* respond to such problems. The police department is the only agency that is mobile, works 24 hours a day, and is able to use force if necessary.[11]

It is clear that the police have a far broader role in our society than crime control, and that much of what the police are asked to do in crowded urban centers—to manage conflict among people, to assist people who cannot care for themselves or who are in physical danger—is critically important. This broader view of the police function has been accompanied by a more reasoned view of the police role

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[10] The reassessment is discussed in the American Bar Association's *Standards Relating to the Urban Police Function,* and it is explored in great depth in a forthcoming book, Herman Goldstein, *Policing a Democratic Society.*

[11] The theme that the capacity to use force lies at the heart of the police function and ties together all that police officers do is the thesis of a monograph by Egon Bittner, *Functions of the Police in Modern Society* (New York: Aronson, 1975).

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". . . the development of the federal role in law enforcement and the growth of the criminal division reflects a practical adaptation over the years to the changing needs of society."

The Federal Role in Criminal Law Enforcement

By Richard L. Thornburgh*
Assistant Attorney General, Criminal Division, U.S. Department of Justice

Today, "making a federal case out of it" means the escalation of concern over a law enforcement problem to the highest level. It has not always been so. The federal government plays such a prominent role in modern criminal law enforcement that we sometimes forget that the states have always had the primary responsibility for what the President has called the preservation of our "domestic tranquility."

In 1789, when the 13 states united under the federal constitution, no one could foresee that the federal government would be significantly involved in law enforcement. Although there was an Attorney General in the original Cabinet of President George Washington, the Department of Justice was not created until 1870, and for years thereafter all its attorneys could have met in one room. Today, the Department of Justice is staffed by over 50,000 persons, whose functions are performed within nine offices.[1] six divisions,[2] six bureaus,[3] and two boards,[4] in 938 locations throughout the United States. The Department of Justice has primary responsibility within the executive branch of the government for the enforcement of the nearly 900 federal criminal laws; within the department, the lion's share of responsibility has been assigned to the Criminal Division.

What is the responsibility of the Department of Justice with regard to criminal law enforcement, particularly in relation to the states? The modern role of the federal government in criminal law enforcement can be described in its various particulars, but to appreciate that role more fully requires historical perspective.[5]

The evolutionary changes that occurred over the years came about under the stimulus of historical events rather than because of any specific theories about government. Basic federalism—the idea that states have their own rights and responsibilities—remains, however, a polestar in the allocation of law enforcement duties.

From the enactment of the Federal Judiciary Act in 1789 to the 1930's, the legal functions of the federal government came to be centralized in the Department of Justice. From about 1920 to the present, especially in the Depression years of the 1930's, the scope of federal criminal legislation underwent a dramatic expansion, largely but not entirely on the basis of the authority given to the federal government under the constitution to regulate interstate and foreign commerce.

Today, the Department of Justice concentrates on crime problems of national significance, especially those that require complicated investigations that often cross state and international boundaries. The states deal primarily with crime problems of lesser geographic significance, many in the category often referred to as "street crimes," which have the most visible and tangible effect on the public, because they are high in number and often involve violence. In recent years, the federal government has provided funds, services and support to the states so that they may better discharge their responsibility as the "first lines of defense" in this area of criminal law enforcement.

* The assistance of Andrew J. Reich, a staff attorney in the Legislation and Special Projects Section, Criminal Division, United States Department of Justice, in the preparation of this paper is gratefully acknowledged.

[1] The Office of Legislative Affairs, the Office of Professional Responsibility, the Office of Public Information, the Office of Management and Finance, the Office of Policy and Planning, the Office of Legal Counsel, the Executive Office of United States Attorneys, the Pardon Attorney, and the Community Relations Service.

[2] The Antitrust, Civil, Civil Rights, Criminal, Land and Natural Resources, and the Tax Divisions.

[3] The Federal Bureau of Investigation, the Bureau of Prisons, the Law Enforcement Assistance Administration, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the United States Marshal's Service.

[4] The Board of Parole and the Board of Immigration Appeals.

[5] Justice Oliver Wendell Holmes said, "A page of history is worth a volume of logic." (*New York Trust Co.* v. *Exner*, 256 U.S. 345 [1921]).

The office of the Attorney General, "the President's lawyer," was established by the Federal Judiciary Act of 1789. The act limited the responsibilities of the Attorney General to representing the federal government before the Supreme Court, and to acting as adviser to the President and the heads of departments regarding questions of law.[6] The first Attorney General, Edmund Randolph, was immediately confronted by a major obstacle arising from the failure of Congress to centralize the legal powers of the federal government in the Office of the Attorney General. In the same act that established the Office of the Attorney General, the Congress created separate legal representatives in each of the 13 judicial districts of the United States. These officials, then called "district attorneys," functioned independently of the Attorney General. Thus, in his capacity as the Executive Branch's advocate before the Supreme Court, the Attorney General was hindered by the fact that he had no part in the trial of the cases in the lower courts that he had to argue on appeal. In his role as legal adviser, the Attorney General rendered opinions that were not specifically binding on the department heads. When his opinions were disregarded, the departments of the federal government could and often did render contradictory interpretations of the same law.

Attempts at centralization began as early as 1791, when President Washington submitted a bill to Congress to extend the Attorney General's authority. Congress was unresponsive to this proposal; and, as the years passed, several statutes decentralized the legal work of the federal government still further. In 1830, the Solicitor of the Treasury was granted the power to instruct the district attorneys in all suits in which the United States was a party or had a legal interest[7] and to establish rules and regulations to be followed by the district attorneys in all suits involving the collection of revenues and debts accruing to the United States.[8] By 1836, the Auditor of the Post Office Department was given similar control over the district attorneys in all suits for moneys due on account of the Post Office Department.[9] Other departments also began requesting independent legal staffs and the authority to control their own litigation in the federal courts. Control by the Attorney General over the legal business of the federal government became minimal, if not nonexistent.

The crisis caused by the outbreak of the Civil War revealed the irrationality of the system that permitted the district attorneys to operate independently, without supervision from a centralized head. The pressures on the federal legal system resulted in the passage of an act that placed all the district attorneys under the general direction of the Attorney General.[10] Furthermore, this act authorized the Attorney General to employ outside counsel, i.e., private attorneys, to assist the district attorneys with the increasing number of cases for which they became responsible as a result of the war.[11] With apparent inconsistency, however, the Congress also enacted other laws that granted both the Solicitor of the Treasury[12] and the Commissioner of Internal Revenue[13] limited authority over the conduct of the federal district attorneys.

The situation was not fully addressed until 1870 when, in the wake of the Civil War, the Department of Justice was created, headed by the Attorney General. The law offices of all other departments were placed under the supervision and control of the Department of Justice,[14] which also gained control over the activities of the district attorneys.[15] In addition, the positions of Solicitor General (who now is responsible for Supreme Court litigation) and two Assistant Attorneys General were established within the department.[16] But as the turmoil of the Civil War subsided, the need for a centralization of the legal business of the federal government seemed to fade from view, and the solicitors of other departments sought to regain the independent powers that they had possessed prior to 1870. They were abetted in these efforts by the failure of Congress to repeal the old laws that had established their powers, and by the fact that their law offices were still maintained at their existing locations within the respective departments. This trend toward decentralization was somewhat moderated by several important court decisions: most significantly, *United States* v. *San Jacinto Tin Co.*,[17] in which the Supreme Court recognized the plenary power of the Attorney General over all litigation involving the federal government. Nonetheless, with the various statutes on legal representation still standing, the situation remained far from satisfactory into the early 1900's.

The exigencies of World War I necessitated the temporary establishment of many new agencies and bureaus. Guided by the precedent of existing departments, these new organizations began insisting on the right to employ their own counsel and to conduct their own litigation. The confusion surrounding the legal business of the federal government became intolerable. Consequently, in 1918, President Woodrow Wilson issued an Executive Order that (1)

[6] Act of September 24, 1789, ch. 20, 1 Stat. 92, §35.
[7] Act of May 29, 1890, ch. 153, 4 Stat. 415, §5.
[8] Act of May 29, 1830, ch. 153, 4 Stat. 415, §7.
[9] Act of July 2, 1836, ch. 270, 5 Stat. 83, §16.
[10] Act of August 2, 1861, ch. 37, 12 Stat. 285, §1.
[11] Act of August 2, 1861, ch. 37, 12 Stat. 385, §2.
[12] Act of August 6, 1861, ch. 65, 12 Stat. 327.
[13] Act of March 2, 1867, ch. 169, 14 Stat. 471, §3.
[14] Act of June 22, 1870, ch. 150, 16 Stat. 162, §3.
[15] Act of June 22, 1870, ch. 150, 16 Stat. 164, §16.
[16] Act of June 22, 1870, ch. 150, 16 Stat. 162, §2.
[17] 125 U.S. 273 (1888).

placed all law officers of the federal government under the supervision and control of the Department of Justice, (2) granted the Department of Justice supervision and control over all litigation involving the federal government, and (3) made the opinions of the Attorney General on questions of law binding on all departments, executive bureaus, agencies and offices.[18]

Unfortunately, however, the statutory authority pursuant to which the President issued the Executive Order expired six months after the Armistice. This fact, combined with the "return to normalcy" of the 1920's, led to another era of decentralization. Once again, the law officers of many departments and agencies insisted on the right to litigate cases on their own behalf. Congress aggravated the problem by enacting several statutes that specifically conferred on certain departments and agencies the authority to conduct litigation in certain types of cases.[19] The situation deteriorated to such an extent that, by 1928, only 115 of the more than 900 legal positions in the executive branch of the federal government were under the specific control of the Attorney General.[20]

The enormous pressures exerted on the federal government as a result of the Depression of the 1930's again revealed the necessity for a centralized legal system under which federal departments and agencies could interpret and argue the law with uniformity. President Franklin Roosevelt responded to this need with the issuance of an Executive Order[21] pursuant to the "Economy Act" of 1932.[22] The Executive Order stated in part, that:

> The functions of prosecuting in the courts of the United States claims and demands by, and offenses against the Government, and of supervising the work of the United States attorneys, marshals, and clerks in connection therewith, now exercised by any agency or officer, are transferred to the Department of Justice.
>
> As to any case referred to the Department of Justice for prosecution or defense in the courts, the function of decision whether and in what manner to prosecute, or to defend, or to compromise, or to appeal, or to abandon prosecution or defense, now exercised by any agency or officer, is transferred to the Department of Justice.[23]

This time, the consolidation took root, and the legal functions of the federal government have been substantially centralized since the promulgation of this order. Although legal-advisory and administrative law functions are still performed in the legal offices of various departments and agencies, the Department of Justice is, in general, the sole representative of the federal government in all matters in litigation.[24] Consequently, the legal positions adopted by the federal government are set forth with greater consistency, and the legal business of the federal government is carried out more efficiently. Just as the Attorney General has been "the President's lawyer," the Department of Justice is now the lawyer for the executive branch of the federal government.

From 1789 onward, the primary responsibility for initiating criminal prosecutions has always resided in the United States Attorney for each judicial district. But with the growth of the centralized Justice Department, a need to centralize supervision of law enforcement activities soon developed. The vehicle for such oversight duties was the department's Criminal Division.

Formal recognition of the Criminal Division was first made by the Attorney General in his annual report of 1919. Prior to that time, the criminal law functions of the Department of Justice were assigned among the Assistant Attorneys General on a non-specialized basis. The division developed as those matters pertaining to criminal law gradually became the responsibility of a single Assistant Attorney General.

The Criminal Division evolved in response to events having repercussions throughout the nation, and in a manner analogous to the growth of the Department of Justice. In its early stages, the entire division operated under the immediate supervision of the Assistant Attorney General in charge. This changed in 1934 when the 73d Congress enacted the so-called "Crime Bill" to recognize and deal with crime in its interstate aspects. The increasing number of criminal prosecutions resulting from the passage of this bill necessitated a partitioning of the division into three sections, the Administrative, Appellate and Trial Sections. Throughout the years there have been numerous changes in the number of, and the division of responsibility among, the various sections.

In 1940, as a response to the dangers confronting the United States as a result of the war in Europe and tensions in the Far East, a National Defense Section was established, later known as the Internal Security Section, to supervise the enforcement of federal criminal statutes pertaining to espionage, sabotage, sedition, foreign agents, treason, censorship and related matters.[25]

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[18] Executive Order No. 2877 (1918).

[19] Act of February 28, 1920, ch. 91, 41 Stat. 492; Act of June 5, 1920, ch. 250, 41 Stat. 990; Act of August 9, 1921, ch. 57, 42 Stat. 147, §4.

[20] 1928 Attorney General Rep. 347.

[21] Executive Order No. 6166 (1933).

[22] Act of March 3, 1933, ch. 212, 47 Stat. 1517, §16.

[23] Executive Order No. 6166, §5 (1933).

[24] See, 5 U.S.C. 3106; 28 U.S.C. 516, 519. In limited situations and for limited purposes not involving criminal prosecutions, attorneys from other departments and agencies may appear in court. For example, see 15 U.S.C. 77t(b), 78u(d) (S.E.C.); 29 U.S.C. 160(e), (j) and (1) (National Labor Relations Board).

[25] This section became a separate division in 1954, but since 1973 has been once again a section within the Criminal Division.

The extent of organized crime activities within the United States was brought to public attention in the early 1950's through the televised hearings of Senator Estes Kefauver's Special Committee to Investigate Organized Crime in Interstate Commerce. These hearings, highlighted by the appearance of reputed underworld king Frank Costello, revealed that crime syndicates were firmly entrenched in large cities and that top-level hoodlums were virtually immune from prosecution because of bribery, political power, and their ties with apparently respectable businessmen. The Criminal Division responded to these hearings by creating a Special Rackets Unit in 1951. The unit led to the formation of the present Organized Crime and Racketeering Section, which coordinates all federal enforcement activities against organized crime. In 1967, this section inaugurated a task force to concentrate the energies of a number of investigative agencies in specific target areas to deal more effectively with organized criminal activities. In 16 cities, these units, now called strike forces, work closely with the United States Attorneys in major racket investigations.

In 1968, to meet the extremely serious problem of drug abuse, the Bureau of Narcotics and Dangerous Drugs (now the Drug Enforcement Administration), which is primarily an investigative and enforcement agency, was established in the Department of Justice. The Criminal Division then created a counterpart section, the Narcotic and Dangerous Drug Section, to handle the increasing number of federal prosecutions involving illicit drugs.

In December, 1969, Joseph Yablonski, defeated candidate for president of the United Mine Workers Union, was murdered, together with his wife and daughter, setting off an investigation by the Federal Bureau of Investigation and by state agencies. This eventually led to federal and state indictments and to the successful prosecution (by the Commonwealth of Pennsylvania) of W. A. "Tony" Boyle, then president of the union. Partly as a result of this investigation, the Criminal Division enlarged a unit in its Organized Crime and Racketeering Section and made it into a new Management and Labor Section (now the Government Regulations and Labor Section), to give more concentrated attention to the enforcement of the laws Congress enacted to protect the assets of labor organizations, the rights of individual union members, and the integrity of the management-labor relationship.

In January, 1976, the Criminal Division again responded to current needs by establishing the Public Integrity Section. Creaton of the new section was occasioned in large measure by public concern over the Watergate scandal and related matters, and by the President's commitment to the restoration of public confidence in government processes. Congress and the public want assurance that the government can and will police itself. The Public Integrity Section supervises the enforcement of federal laws on official corruption, providing a stronger focus and representing a renewed commitment by the department to the fostering of public confidence in the integrity of the federal government. At about the same time, the Attorney General created the Office of Professional Responsibility, which is responsible for maintaining integrity in the Department of Justice.

PRESENT ORGANIZATION AND ACTIVITIES OF THE CRIMINAL DIVISION

As noted previously, the United States Attorneys (formerly the "district attorneys") and their assistants in the 94 federal judicial districts shoulder the primary responsibility for the prosecution of federal offenses, actually handling about 95 percent of the criminal cases initiated in the federal courts. The Criminal Division assists them by rendering advice and counsel on questions of law, policy, procedure, investigations, grand jury proceedings and the preparation of indictments and other pleadings. Assistance in the actual prosecution of cases is given whenever a United States Attorney recuses himself, or more typically, requires help because of the pressure of work in his office or the length of time required for the preparation and trial of a case of great complexity or magnitude.

The responsibilities of the Criminal Division are presently divided among ten sections,[26] which oversee the prosecution of all federal criminal offenses (except a limited number within the specialized jurisdiction of the Antitrust, Civil Rights, Land and Natural Resources and Tax Divisions). The Criminal Division is headed by an Assistant Attorney General, who is appointed by the President with the advice and consent of the Senate. Deputy Assistant Attorneys General and Section Chiefs in the Division are appointed by the Assistant Attorney General. There are presently about 400 attorneys in the division, assisted by nearly 300 support personnel.

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Richard L. Thornburgh has served as Assistant Attorney General in charge of the Criminal Division of the U.S. Department of Justice since July, 1975. In 1973, he received a Special Medallion Award from the Federal Drug Enforcement Administration for "significant personal efforts to help eliminate drug abuse."

[26] Organized Crime and Racketeering, Narcotic and Dangerous Drug, Public Integrity, Fraud, Appellate, Government Regulations and Labor, General Crimes, Legislation and Special Projects, Internal Security and Special Litigation.

". . . state courts affect the overall impact of public policy through the cumulative effects of their decisions in everyday or seemingly routine cases. . . . Decisions in a set or series of similar cases may determine the patterns of court rulings that affect important parts of American life."

State Court Organization

By Henry Robert Glick
Associate Professor of Government, Florida State University

The structure of state and local courts in the United States reflects numerous influences. State courts have changed as social, economic and political demands have required new courts with new functions to meet problems that did not exist in earlier periods. However, while change has occurred, state traditions have also been important in preserving certain features of court systems; thus many states have new as well as old courts, some stemming from English judicial traditions. Unlike the federal courts that are uniform for the entire United States, the size and structure of state court systems vary greatly. Complex state court organization sometimes becomes an important political issue, for despite recent efforts to make court systems more modern and more responsive to lengthening backlogs, many urban courts remain so congested and inefficient that prisoners awaiting trial in jail have rioted against unjust delays. Coupled with intolerable local jail conditions, "delay in courts" has become an explosive political issue in American cities.

Despite differences among state court systems, they all share basic organizational characteristics. Today, all 50 states have three general tiers of courts: (1) *appellate courts* (including appellate courts of last resort, usually called state supreme courts, and intermediate appellate courts, found in about half the states) whose main function is to review the decisions of lower courts; (2) *trial courts of general jurisdiction* that are the trial courts with the broadest range of authority in holding trials; and (3) *trial courts of limited jurisdiction* that include a variety of highly specialized courts that hear cases in only limited categories (e.g., traffic courts, divorce courts, small claims courts, probate courts).

Although the basic structures of state court systems are similar, the specific number, names and functions of state courts vary widely. The most important differences are found in the presence or absence of intermediate appellate courts and the great variations in the number and types of trial courts of limited jurisdiction. The states are similar in that most of them have only one or two types of trial courts of limited jurisdiction. Variations in the complexity of court systems are apparent in the contrast between the courts of California and Alabama. (See Table 1.)

TABLE 1: State Court Variations

California	*Alabama*
—Appellate Courts—	
Supreme Court	Supreme Court
District Courts of Appeals	Court of Appeal
	Court of Criminal Appeal
	Court of Civil Appeal
—Trial Courts of General Jurisdiction—	
Superior Courts	Circuit Courts
—Trial Courts of Limited Jurisdiction—	
Municipal Courts	District Courts
Justice Courts	Municipal Courts
	Probate Courts
	County Courts
	Justice of the Peace Courts
	Inferior Courts
	Justice Courts
	Small Claims Courts
	Recorders Courts

The systems are similar in that both have supreme as well as intermediate appellate courts; however, the Alabama court system is much more complex because it has two intermediate appellate courts and many more trial courts of limited jurisdiction. Other state court systems vary in complexity in similar ways.

State courts have evolved from rather simple institutions in the colonial and early post-revolutionary period to very complex, highly specialized court systems today. In the colonial period, most political power was centralized in the colonial governor and his immediate advisers. With few exceptions, the governor performed executive and legislative as well as judicial functions. Certain minor officials were appointed by the governor to aid in the management of judicial duties, but they exercised little power that was independent of the governor.

In the early period of colonial rule, the tasks of

governing were relatively simple and routine, and there were very few local courts. As the population increased, new courts were created to provide local services for settling an increasing number of conflicts. These few new courts were organized on the town and county levels so that the litigants would not have to travel great distances to have their cases argued before a court.[1] Appeals from all courts could usually be taken to the governor and to the colonial assembly and possibly, although rarely, to the courts of England.

The judicial and legal systems in each colony developed differently in accord with local beliefs and customs. The English legal tradition and the English court structures were usually adopted, but they were soon modified to suit the requirements of local conditions. Religious practices and customs and the commercial development of the individual colonies resulted in different legal rulings and court organization.[2] In certain respects, these early variations among the colonies have persisted and contribute to the great variety of court systems today.

The structure of colonial courts and the development of laws were affected also by the general absence of legal experts. The lack of well-trained lawyers reflected the low status of law and the courts in the early colonial period and was a factor in maintaining the non-professional image of the judiciary. Few lawyers emigrated to the colonies,[3] and court procedures and the law in England were distrusted by the colonists, many of whom had come to America to escape legal action. Thus the colonists were not sympathetic to the development of a professional class of lawyers in America. Wealthy landowners and merchants also opposed the development of a professional bar because they feared competition for the general social, economic and political control that they exercised over colonial society.[4] Not until the 1800's did the practice of law develop into a major and respected profession in the United States. As a result, early American courts were staffed on a part-time basis by landowners and merchants with little or no legal training,[5] whose judicial power coincided with their financial influence in the colonies.

Despite the absence of trained personnel and the unpopularity of law and the judiciary, new courts continued to be added to the judicial system. As the population grew and the economy expanded, litigation increased, and more courts were required. For example, as early as 1685, the General Court of Massachusetts (which was the supreme court and the legislature) broadened the powers of county courts,[6] and in 1691, a new Chancery Court was created. Similarly, in 1698, Connecticut established new probate courts that dealt specifically with wills and estates, a group of cases formerly heard by the county courts.[7] As new kinds of courts were added, judges and lawyers dealt with more specialized cases and gained skills and established rules and procedures that further distinguished judicial and legislative institutions.

EARLY AMERICAN COURTS

The structure of state courts did not change greatly after the revolution. Because colonial courts were usually controlled by the governor and acted to extend his power, judges were distrusted, and the colonists were not anxious to create a large, independent and powerful judiciary. An indication of their wariness is found in the decisions of newly powerful state legislatures, which sometimes removed judges from office or occasionally abolished an entire court to counter an unpopular court decision.[8]

Distrust of the judiciary became even more prevalent when various courts declared legislative acts "unconstitutional." Unlike many English practices and institutions that were modified and adopted in the colonies, the power of judicial review was largely an American creation, and it quickly became a major source of political conflict between courts and legislatures. Despite legislative threats and the actual removal of judges in a few instances, state courts became more assertive and declared legislative acts unconstitutional with greater frequency. These cases often involved important economic interests like creditor-debtor conflicts. The popular legislatures were usually more favorable to debtors, while the courts reflected the interests of creditors, who urged a strict monetary policy.[9]

These early political conflicts between state courts and legislatures were significant for court organization, because they were an early indication of the eventual development of an autonomous judicial sys-

[1] See, for example, David Mars and Fred Kort, *Administration of Justice in Connecticut,* edited by I. Ridgeway Davis (Storrs, Connecticut: Institute of Public Service, University of Connecticut, 1963), pp. 20–21.

[2] Francis R. Aumann, *The Changing American Legal System* (Columbus, Ohio: Ohio State University, 1940), pp. 6 and 10.

[3] *Ibid.,* p. 8.

[4] Charles Warren, *A History of the American Bar* (Boston: Little, Brown, 1911), p. 8.

[5] Aumann, *op. cit.,* p. 35.

[6] E. H. Woodruff, "Chancery in Massachusetts," *Boston University Law Review,* vol. 9 (1929), p. 169.

[7] Mars and Kort, *op. cit.,* p. 22.

[8] Herbert Jacob, "The Courts as Political Agencies," *Studies in Judicial Politics,* vol. 8 (New Orleans: Tulane University, 1962), p. 17.

[9] *Ibid.,* p. 18. While *Marbury* v. *Madison* (1803) is well known as the United States Supreme Court case in which the Supreme Court proclaimed its power to review legislation, eight state courts had espoused the power of judicial review years before that famous case. See Charles Grove Haines, *The American Doctrine of Judicial Supremacy* (Berkeley: University of California Press, 1932), pp. 148–65.

tem. Although certain state legislatures continued to act as appellate courts for many years,[10] state courts were beginning to establish the basis of independent judicial authority. Courts and laws also became more specialized as the population and the economy of the states increased and became more complex. This contributed to the emergence of state courts as independent political institutions.

COURTS IN A MODERNIZING SOCIETY

The structure of state courts, caseloads and decisions began to change in important ways in the middle and late 1800's. This was the period of industrialization in the United States, which brought about changes in business and economic relations and changes that affected the fundamental character of American life. Labor unions were formed in increasing numbers; new immigrants from eastern and southern Europe began to arrive in the cities of the northeast; and the trend toward modern urban society began. These changes created pressures that had never been felt before: life styles that were so much a part of a largely rural United States were beginning to be replaced by new life styles in urban, industrial America. These fundamental revisions in the patterns of American society affected the courts in important ways. Industrial technology like the development of steam power and the growth of railroads, shipping and commerce were the source of economic conflicts that had not existed in simpler times. New kinds of court suits over rates charged, liability for personal injury and property damage, and questions about the basic structure of corporations were channeled into the courts. In many instances, there was no legislation dealing with these new and important problems, and the courts had the responsibility of creating new rules that would govern the major issues of the industrial age. Such responsibility provided the courts with additional opportunities to become important and necessary parts of state political systems.[11]

After the Civil War, there were many profound changes in court structure. The amount of litigation generated by large concentrations of people in the cities of the northeast was a new pressure on the judicial system. More important, however, were the new situations that courts operating in a simpler, rural society never had to consider. The crowded nature of city living, the requirements of grueling industrial employment, and the influx of many different social groups altered the traditional patterns of life of the new city dwellers. Adjustments to an often bewildering environment were difficult to make, and family cohesion and self-sufficiency were seriously undermined. The relations between tenants and landlords and employees and employers frequently led to conflicts and court suits. Shattered family life, juvenile delinquency and higher crime rates were also problems with which the courts had to deal.

Minor conflicts between consumers and small businesses also generated litigation. Earlier, business litigation usually involved larger corporations, but the growth of the cities provided a setting for the establishment of many small retail businesses. Disputes between businesses and between buyers and sellers were often petty and relatively unimportant in broader social terms, but they were important to the litigants themselves, and city courts were faced with many new demands. Finally, the widespread ownership of automobiles posed numerous problems. Traffic laws had to be created by legislatures and interpreted by the courts; accident claims and the development and application of liability law placed more demands on courts.[12]

These new demands had a major impact on the structure of state court systems. Although the number and variety of state courts had grown somewhat, social and economic change occurred so rapidly toward the end of the nineteenth century that most state judicial systems could not meet the demands made upon them. For a time, the existing city courts, primarily justices of the peace, dealt with much of this new litigation, but the structure of these courts was unsuited to it. Most judges had little or no legal training, and they lacked the ability to do anything except quickly to process the large number of cases. Moreover, the fee system of justice courts often made it very expensive for an individual to go to court to make a claim. Typical cases included employees' claims for wages, collection of small debts and payment for goods. The amount of money involved in these cases often was less than $50, but the fees charged by the court to hear the case sometimes took 10 percent or more of the amount collected—an amount that many claimants could not afford.

In response to these new problems, some states began to enlarge their judicial systems by adding new courts, whose jurisdiction, procedures, and personnel were designed to deal with specific parts of the litigation. These new courts not only helped to dispose of many cases, they also represented innovations in judicial structure and in ways of coping with social and economic pressures. One important change, for example, was the creation of small claims courts with simplified procedures and without lawyers, to help in the collection of debts at minimal cost. Juvenile and family relations courts were added in some cities. Besides settling litigation, these courts attempted to

[10] Legislative appellate power ended entirely in the United States in 1857, when Rhode Island transferred all appellate judicial authority to the state supreme court. See Aumann, *op. cit.*, p. 164.

[11] See, for example, Warren, *op. cit.*, pp. 475–507.

[12] James Willard Hurst, *The Growth of American Law* (Boston: Little, Brown and Company, 1950), pp. 147–69.

provide constructive guidance to the juvenile offender and the troubled family.[13] Similarly, traffic courts were added in many cities to cope with the litigation arising from increased automobile ownership.

As a rule, new courts and judges were not added to state judicial systems according to any overall coherent plan. Changes were made sporadically and haphazardly, and little attention was paid to jurisdictional boundaries of the courts and to the possibility that the authority of one court might overlap that of another. In addition, except for the power of appellate courts to review the decisions of trial courts, each court was an independent institution. Rules of procedure and decisions themselves varied widely, and judicial decision-making was highly decentralized.

In some states, recent efforts at judicial reform have combined numerous courts with overlapping powers into a more streamlined court system, but many states still have highly complex court systems that are the result of years of haphazard growth. Consequently, complexity and confusion exist in many states. For example, describing the court system of Maryland, one commentator has written:

> Maryland's court system is very complex. There are no less than 16 different types of courts, with little uniformity from one community to another. A lawyer from one county venturing into another is likely to feel almost as bewildered as if he had gone into another state with an entirely different system of courts.[14]

POLICY-MAKING IN STATE AND LOCAL COURTS

It is important to recognize that, while decisions of the United States Supreme Court receive the most publicity and the Supreme Court seems to be the most important judicial institution in the United States, state and local courts deal with those cases, problems and issues that most often affect basic aspects of daily life. Although federal courts also deal with some of these issues, in terms of the quantity of cases and the different types of litigation, state and local courts are much more significant parts of the American judicial system.

Included in the typical case load of state and local courts are most of the criminal cases decided in the United States. Offenses ranging from murder, rape, theft and assault to less serious violations like traffic violations, disturbing the peace and trespassing are all settled in state and local courts. The federal courts have jurisdiction over cases dealing with violations of federal law, but these constitute a much smaller number and variety of cases than all the criminal cases decided each year in the various state courts. Other cases channeled into state and local courts include conflicts over property ownership, condemnation of property for public purposes (e.g., parks, highways, public buildings), contract disputes, workmen's and unemployment compensation, disagreements about local zoning policy, divorce, adoption, wills, trusts and estates, conflicts over elections, landlord-tenant conflicts and automobile accident cases. Most citizens rarely, if ever, find themselves involved in a court case, but if they do become involved in a dispute that cannot be settled without litigation, or if they commit a crime, the chances are great that their cases will be decided in one of the many state and local courts.

More important, courts may affect state policy in decisions and in series of similar decisions over a period of time. First, state courts have various opportunities to make important decisions that affect major government policy. For example, in recent years state supreme courts have made important decisions affecting state policy toward civil rights and the rights of criminal defendants, state tax policy, government regulation of business, the apportionment of state legislatures, election procedures and the financing of public education. In a single court case, the high court of a state may declare an act of the legislature unconstitutional, or, by a written opinion, a decision may alter the future actions of other state trial courts.

Perhaps it is even more significant that state courts affect the overall impact of public policy through the cumulative effects of their decisions in everyday or seemingly routine cases. Few Americans, for example, are much concerned with the outcome of individual criminal or divorce cases or a decision as to whether an injured employee may collect state benefits. However, decisions in a set or series of similar cases may determine the patterns of court rulings that affect important parts of American life. For example, when judges are uniformly harsh on specific classes of criminals, or when divorces are easily or reluctantly granted, or when labor unions or businesses typically win or lose cases in certain courts or states, it is clear that judges influence government policy regulating fundamental aspects of American life that are often taken for granted.

A good illustration of the combined effects of judicial policy and complex court organization can be found in recent jail rebellions and riots. Prisoners in

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[13] *Ibid.*, p. 155.

[14] *Survey of the Judicial System of Maryland* (New York: Institute of Judicial Administration, 1967), pp. 11–12.

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"For a variety of reasons, the federal courts are now deeply involved in the administration of justice across the entire nation. . . . Whether or not there are 'solutions' to the problems of administration of criminal justice remains to be seen."

Criminal Justice in the Federal Courts

By Sheldon Goldman
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Criminal justice in the United States today is ultimately the responsibility of more than 400 federal district judges serving in 94 federal judicial districts, over 100 appeals court judges affiliated with the 11 regional federal courts of appeals, and the nine members of the United States Supreme Court.[1] The nature of the federal courts' responsibility and the reasons for it, the implications of this for the ability of these courts to administer justice, the difficulties faced by the courts in dispensing justice and some proposals for reform will be briefly sketched in the observations that follow.

The federal trial courts (i.e., federal district courts) have original jurisdiction for processing the prosecution of violators of federal law. Criminal justice is routinely administered without trial in more than three out of five cases beyond the arraignment stage where the defendant pleads guilty. About one out of five cases is dismissed by the government and only the balance go to trial.[2]

The federal appeals courts and the Supreme Court (at its own discretion) hear appeals from federal convictions. These appeals may involve a challenge to the rulings of the federal district judge concerning a variety of matters from the admissibility of evidence or statements (confessions) from the accused to the rulings made during the course of the trial, including instructions given to the jury. Directly or indirectly, these cases concern guarantees of rights to the accused under the Bill of Rights. Also, on occasion, the constitutionality of a federal criminal law is directly challenged; then, whatever the lower court ruling, an appeal to a higher court typically follows. At the Supreme Court level, decisions from the highest state courts involving state criminal prosecutions may be entertained when state criminal statutes and criminal procedures are challenged as violations of the federal constitution, laws, or treaties.

The supervisory reach of the federal courts, however, goes far beyond the ordinary course of appeals from criminal convictions. Although treated as a civil law process, habeas corpus proceedings brought by state prisoners in federal district courts offer the federal courts a major opportunity to oversee criminal justice standards across the nation. Even years after an original conviction, a state prisoner who thinks his or her federal constitutional rights were violated by the state can challenge the legality of his or her imprisonment by instituting habeas corpus proceedings. The state is thus forced to justify its criminal justice standards before a federal district judge. Such cases can be appealed to a federal appeals court and taken by the Supreme Court if it wishes to do so.

Two other means of supervising state criminal justice standards should be mentioned. If a criminal defendant in a state court believes that it is impossible to receive a fair trial, proceedings can be instituted that could result in the removal of the trial from the state court to a federal court. In addition, a civil suit can be filed in a federal district court to prevent the enforcement of a state criminal law that the plaintiff believes violates the federal constitution. This requires the federal judge to consider not the criminal procedures and the basic fairness of a trial but rather the justice of the substance of the law itself.

How have the federal courts gained these enormous supervisory powers over criminal justice? The answer is too complex to be given here in great detail. In brief, during the nineteenth century the federal courts

[1] During fiscal 1975, there were 400 district court and 97 appeals court judgeships that were authorized for the lower federal courts. However, there were 102 senior (retired) district judges and 47 senior appeals judges, and most of them voluntarily served part time and some even full time, thus reducing the caseload for the judges in active service. District judges are also assisted by United States magistrates who take responsibility for much of the pretrial work. In fiscal 1975, there were 487 authorized positions of United States magistrates. For statistics on the federal courts see *Annual Report of the Director, Administrative Office of the United States Courts, 1975.*

[2] See the discussion and references in Sheldon Goldman and Thomas P. Jahnige, *The Federal Courts as a Political System,* 2d. ed. (New York: Harper & Row, 1976), pp. 100–106, 121–130.

generally had little concern for standards of criminial justice in the states. Initially, this reflected the powerful position of the states vis-à-vis the national government and their insistence that as sovereign states they did not have to justify their actions before any federal court. The states thought that the eleventh amendment to the constitution settled in their favor any doubt concerning this. But they failed to appreciate the ingenuity and persistence of Chief Justice John Marshall and his colleagues, who subsequently established the doctrine that state court convictions in which the defendant based a defense on a federal law, treaty, or the federal constitution were reviewable by the Supreme Court.[3]

Until the fourteenth amendment became part of the constitution in 1868, the constitution imposed few criminal justice standards on the states. With the adoption of the fourteenth amendment, in particular the due process clause ("No State shall . . . deprive any person of life, liberty, or property without due process of law"), the potential for federal court supervision of criminal justice in the states was established. At about the same time, Congress passed legislation giving the federal courts jurisdiction to entertain habeas corpus petitions from state prisoners. However, in the last third of the nineteenth and the first third of the twentieth century, the federal judiciary included judges who were concerned not with civil liberties but with the attempts of government (both state and national) to regulate the economy. Nonetheless, these judges developed doctrines that enabled the federal courts to exercise vast supervisory powers over the actions of the states.[4] Once the judiciary was staffed by judges more sympathetic to civil liberties, these doctrines provided the basis for overseeing criminal justice.

Gradually, during the second third of the twentieth century, most of the basic rights guaranteed to federal criminal defendants in the Bill of Rights became "incorporated" within the fourteenth amendment's due process clause and provided the basis for the federal judiciary's supervision of criminal justice in the states.[5] Much of the incorporation of criminal procedural guarantees occurred during the 1960's, when the Supreme Court, under Chief Justice Earl Warren, for the first time in its history had a liberal activist majority intent on elevating the standards of criminal justice. Significantly, a 1963 decision of the Warren Court made it easier for state prisoners to pursue habeas corpus relief in the federal district courts.[6]

The expansion of federal court supervision over criminal justice in the states resulted in a caseload explosion at every level of the court system. Although under Chief Justice Warren Burger the Supreme Court has been dominated by a new majority considerably less sympathetic to the claims of criminal defendants or prisoners than the Warren Court majority,[7] the caseload problem has persisted to the present.

The federal courts have a dual responsibility for overseeing the administration of criminal justice. They are concerned with those accused of violating federal law; they also oversee the criminal justice standards used by the states particularly (but not exclusively) through the habeas corpus process. Table 1 presents the criminal as well as civil caseload figures for five selected years over the recent 15-year period.

It is clear from Table 1 that the total business of each court level has increased dramatically from fiscal 1960 through fiscal 1975; the greatest increase occurred at the appeals court level. By 1975, the appeals courts had more than five times as many cases as they had 15 years earlier. It is reasonable to conclude that the Warren Court's assumption of responsibility for elevating criminal justice standards in the states played a significant part in increasing court business at every level. The increase in state prisoners' habeas corpus petitions is most startling at the district and appeals court levels. Over the 15-year period, the district courts experienced almost a ninefold increase in habeas corpus petitions from state prisoners, while the appeals courts had close to eight times the petitions it had 15 years earlier.

Even at the Supreme Court level, state and federal prisoner petitions placed on its miscellaneous docket approximately doubled. Clearly, the Warren Court's deep concern with criminal justice standards provided a profound challenge to the administrative abilities of the federal courts. This has been particularly true in the appeals courts and the Supreme Court. If it is assumed that they were not underworked in 1960, the question must be raised as to the impact of this greatly increased workload on the courts' ability to administer justice.

This becomes even more important when federal criminal prosecution figures are considered. Thanks to the liberal criminal justice rulings of the Warren Court and to the Criminal Justice Act of 1964 (under which the federal government picks up the tab for a lawyer for indigent defendants for the trial and for an appeal as well), appeals from criminal convictions in the district courts have increased close to sevenfold

[3] *Cohens* v. *Virginia*, 6 Wheat. 264 (1821).

[4] See, in general, Robert G. McCloskey, *The American Supreme Court* (Chicago: University of Chicago Press, 1960).

[5] For an extensive analysis of the "incorporation" of criminal procedural guarantees see Henry J. Abraham, *Freedom and the Court* (New York: Oxford University Press, 1972), pp. 29–143.

[6] *Fay* v. *Noia*, 372 U.S. 391 (1963).

[7] See Leonard W. Levy, *Against the Law: The Nixon Court and Criminal Justice* (New York: Harper & Row, 1974).

TABLE I: The Business of the Federal Courts—Cases Begun (Filed) during Fiscal Years 1960, 1964, 1968, 1972, and 1975

	Fiscal 1960	Fiscal 1964	Fiscal 1968	Fiscal 1972	Fiscal 1975	Percent increase from fiscal 1960 to fiscal 1975
U.S. District Courts:						
Criminal cases	28,137	29,944	30,714	47,043	43,282	54%
Habeas corpus, federal prisoners	861	1,045	1,202	1,429	1,687	96%
Habeas corpus, state prisoners	872	3,531	6,331	7,868	7,838	799%
Other civil cases	57,551	62,354	63,916	86,876	107,795	87%
Total criminal and civil cases	87,421	96,874	102,163	143,216	160,602	84%
Number of authorized judgeships	245	306	341	400	400	63%
U.S. Courts of Appeals:						
Criminal cases	623	1,223*	2,098	3,980	4,187	572%
Habeas corpus, federal prisoners	65	104*	118	234	207	218%
Habeas corpus, state prisoners	111	571*	1,069	1,319	871	685%
Administrative agency cases	737	1,106*	1,545	1,509	2,290	211%
Other civil cases	1,409	1,981*	4,286	7,493	8,414	497%
Total criminal and civil cases	2,945	6,766*	9,116	14,535	16,658	466%
Number of authorized judgeships	68	78	88	97	97	43%
U.S. Supreme Court:						
Appellate Docket	857	1,017	1,540	1,708	1,768	106%
Miscellaneous Docket	1,005	1,276	2,036	1,930	1,891	88%

* Fiscal 1965 figure; the fiscal 1964 breakdowns were not provided in the Annual Reports of the Administrative Office.
Sources: Annual Reports of the Director of the Administrative Office of the U.S. Courts; Supreme Court Reporter; U.S. Law Week.

from fiscal 1960 to fiscal 1975. Questions can be raised with regard to the extent to which these caseload pressures impede the administration of justice. To be sure, the caseload crunch has motivated the federal judiciary to develop stopgap measures in order to stay afloat. But it is fair to ask whether litigants are receiving the same consideration of their claims and counterclaims that they would receive if the proportion of cases to judges were the same today as it was 15 years ago. This takes us more directly to a consideration of some of the problem areas of criminal justice administration and selected proposals aimed at correcting present deficiencies. The focus will be more on a description of some major problems and considerably less on proposed solutions as proposals for reform are extensively considered elsewhere in this symposium.

There is no doubt that the increased caseloads of the federal appellate courts and the district courts (particularly in the large metropolitan areas) present problems of court management or administration and fundamental problems of achieving justice.[8] Logjams in the courts create backlogs in court calendars that delay the resolution of some cases (particularly civil cases) several years. In the Speedy Trial Act of 1974, Congress sought to guarantee a speedy trial to those accused of violating federal law by requiring the government either to bring the accused to trial within a specified time period or to drop the charges. By 1980, the period between arraignment and trial can be no longer than 60 days. What this means for the district courts is that criminal proceedings will have the highest priority; as a consequence, the backlog of civil suits, including habeas corpus proceedings, can be expected to increase, unless a host of minor and probably major "reforms" are instituted.

The case crunch can not only delay justice; it can also affect the quality of justice. A greater caseload per judge obviously means that less time is available for each case. This means that less time can be given to research and deliberation.

What can be done to remedy the problems associated with the case crunch? Some relatively minor remedies have frequently been suggested in recent years, including proposals for more judges, more supporting court personnel, and more courts.[9] More fundamental proposals with broad implications for the workings of our criminal justice system have also been discussed seriously. One such proposal actively

[8] "Justice" is admittedly a difficult concept to pin down. For the most part, we use the term here to suggest basic procedural fairness through adherence to the procedural guarantees of the Bill of Rights and its application to all people equally ("equal justice"). However, "justice" may also imply respect for substantive rights and liberties as ultimately recognized by the Supreme Court.

[9] Also suggested has been the creation of new districts and circuits out of the busiest (in terms of cases) courts in the country. Proposals recently in process (or already implemented) include: (1) more extensive use of U.S. magistrates by assigning them to tasks previously performed by district judges (note that the Supreme Court in 1976 gave its blessing to this in *Mathews* v. *Weber*, 96 S. Ct. 549 [1976]); (2) the use of professional court administrators employing advanced management techniques and data processing systems; and (3) the flexible use of judges, shifting them temporarily from less busy districts or circuits to those with the largest backlogs of cases.

promoted by Chief Justice Burger (among others)[10] is the elimination of the diversity of citizenship jurisdiction, whereby matters ordinarily settled in state courts go to federal court if they involve plaintiffs from one state suing respondents residing elsewhere. In these cases, federal courts are obliged to apply state law; it has therefore been argued that state judges who continually work with state law, rather than federal judges who do not, are best able to interpret and apply state law. Chief Justice Burger has pointed out that diversity cases represent about one-fourth of all civil cases handled by the district courts each year.[11] Were the civil docket reduced, federal judges would have more time to devote to criminal matters.

Another fundamental proposal is to limit the use of habeas corpus by state prisoners by lowering the standards of criminal justice that the states are required to follow, thus contracting the grounds for pursuing habeas corpus. Indeed, this approach has characterized much of the Burger Court's decision-making in the area of criminal procedures. Habeas corpus relief could also be denied state prisoners if the federal courts were instructed to defer to the state courts' adjudication of the federal questions at issue.[12] Narrowing the conditions under which habeas corpus petitions from state prisoners can be entertained by federal district judges would not only reduce the case crunch but would fundamentally alter the role the federal courts have played supervising criminal justice in the states. This would have serious implications for another problem area, the achievement of uniform standards of justice throughout the country.

The criminal law case crunch would also be lessened (although more in the state judicial systems than in the federal judicial system) if some types of behavior were not considered criminal by law. In particular, it has been frequently suggested that with few exceptions, crimes without victims, in which there is no complaining party aside from the government, should no longer be considered criminal. It is argued that consenting adults' sexual acts and their access to pornography, gambling, and narcotics use and small-scale sales, while they may raise serious moral issues, are best dealt with by institutions other than the criminal justice system; cluttering the courts with such victimless crimes is said to make it more difficult to administer justice in cases with real victims.

The case crunch at the Supreme Court level has led to a proposal for a new national court of appeals to share some of the burdens. Although there have been a number of alternative suggestions of such a court,[13] the current version under consideration by Congress would give the Supreme Court authority to send cases to the proposed court for resolution. If the Supreme Court were not satisfied with the decisions, it would be able to review them. This proposal, however, would not necessarily reduce the workload of the justices and would perhaps increase it, because the Supreme Court would have to supervise the decision-making of the new court. However, implementation of the proposal would permit authoritative resolution of perhaps twice as many cases than are at present resolved.[14]

UNIFORM APPLICATION OF STANDARDS OF CRIMINAL JUSTICE

The concept of justice includes the notion of equal treatment before the law. Unfortunately, it is widely believed (and there is some evidence that suggests) that equal treatment before the law is difficult and at times impossible to achieve. Our courts are adversarial; "the truth" is thought to emerge from the clash between the accused and the prosecution. The judge has neither the special responsibility nor the resources actively to seek out and determine "the truth." In practice, this means that the justice one gets is related to what one can financially afford. The rich have the resources to hire the most skilled defense lawyers and pay their lawyers whatever is necessary to conduct the best defense. The less wealthy have considerably less at their command, and they are opposed by the state with all its resources. The indigent, who must rely on court-appointed counsel or on a legal aid lawyer, are often at the greatest disadvantage.

The skill of the lawyer comes into play at every stage of the process, from the selection of the jury, the admissibility of the evidence, the cross-examina-

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[10] See his *Annual Report on the State of the Judiciary,* reprinted in the *Supreme Court Reporter,* vol. 96, no. 9, pp. 3–11 and especially p. 5.

[11] *Ibid.*

[12] The Supreme Court is currently considering doing this in terms of fourth amendment search and seizure claims by state prisoners. See the account of oral argument in *The New York Times,* February 25, 1976, p. 18.

[13] See Goldman and Jahnige, *op. cit.,* pp. 134–136.

[14] Interestingly, there are no serious proposals being made to alter the Supreme Court itself radically (in terms of the number of justices and internal procedures or structure) to enable it to accomplish more and to reduce the burdens on the individual justices.

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"We have a right to change our collective mind about the jury system. But is is questionable whether we will exercise that right as long as we are reminded from time to time of the danger of allowing government processes to be conducted out of sight and reach and beyond the comprehension of the ordinary citizen."

"The Great and Inestimable Privilege": The American Criminal Jury

By James E. Rooks, Jr.
Assistant Editor, The Association of Trial Lawyers of America

In any courtroom in the United States while court is in session, people are talking about a dispute of some kind, because courts are the formal institutions in which disputes are resolved voluntarily or by force of law. The dispute may be between or among private citizens, or it may be between the sovereign and one or more citizens. In the latter case, the "dispute" involves criminal conduct, and the proceeding will be a criminal prosecution.

In the process of resolving any dispute in which an independent, impartial institution like a court is involved, two basic functions must be performed. First, the dispute resolver must learn about the subject matter of the dispute and about the parties to it. Second, it (or he, or she) must decide on an appropriate course of action to resolve it. Where there is a rule of law (as there is in this country) as opposed to a rule of arbitrary power, the dispute resolver must determine what resolution the law prescribes.

Thus, formal, institutional dispute resolution requires answers to questions of fact and questions of law. In the United States and in other countries which emulate the English common law tradition, a judge answers the legal questions drawing on his specialized knowledge of the law; the fact questions, in a number of situations, are left to a jury of ordinary citizens. The jury is not allowed to cross the conceptual line to answer questions of law; the judge is not allowed to cross the line and substitute his view of the facts for the jury's, although he guides and to some extent controls the jury function and instructs the jury as to what weight and effect to give to the facts.

There is some disagreement among legal historians as to the actual origins of the jury system. There is little question that it was first used in criminal proceedings, however, and that its present use in civil cases came later.[1] The jury as a fact finder evolved from a system in which 12 local men[2] (who were likely to know, because they lived in the area, what the truth of the matter was) were brought to court to tell under oath what they knew of the dispute. That system differed from the present procedure, of course, in that the jurors were telling what they knew on their own, not what they learned during the proceedings. The modern jury, which theoretically listens only to the evidence and determines whether or not the government has proved its case against the accused, evolved later. Nowadays both sides—prosecution and defense alike—normally go to great lengths to ensure that the modern jury is *not* basing its verdict on personal knowledge of the facts or on personal belief (developed prior to the trial) as to the defendant's guilt or innocence.

It was this modern, fact-*finding* jury that had evolved in England by the time of the colonization of North America. It had already earned a reputa-

[1] Some explanation of a few legal terms may be of value to the reader. Legal proceedings in this country are either "civil" or "criminal." Criminal cases are always contests between the government and the criminal defendant. The criminal's act is said to offend all of the people rather than the victim alone, and it is left to the government to prosecute the defendant on behalf of the entire aggrieved class of citizens. There is no private right to prosecute, although a private citizen may make a complaint to the police. "Civil" cases are controversies concerning private individuals, groups, or corporations, generally involving property or seeking redress for injuries or loss inflicted on the plaintiff non-criminally. The term "civil" may also refer to foreign countries and to the single American state (Louisiana) that employ the codified system of civil law generally found in Europe. As used in this article, "civil" refers to non-criminal American law, and "civil jury" refers to the jury in a civil case here.

[2] In common law in England, and until 1898 or later in this country, women were held to be disqualified from jury service owing to a "defect of sex" (*propter defectum sexus*).

tion in England as a potential insulator of the common people from a repressive and arbitrary government,[3] and the jury's usefulness in protecting neighbors against an overbearing sovereign came to be crucial in colonies that were increasingly at odds with England. The right to trial by jury was incorporated into colonial charters and into the legislation of virtually all of the English colonies. The Declaration of Rights of the First Continental Congress (October 14, 1774) specifically provided that the colonists were entitled

> to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage according to the course of the law.

Similar language was adopted by the Stamp Act Congress (1775) and by the drafters of the Constitution of Virginia (1776). The Declaration of Independence specified, as a reason for the separation from England, George III's dereliction in "depriving us, in many Cases, of the benefits of Trial by Jury." The state constitutions drafted during the Revolutionary period almost without exception included a jury trial provision. In 1789, the United States constitution, in article III, section 2,[4] provided for jury trial of crimes over which the new federal government had jurisdiction. This section, however, related only to criminal cases, and made no mention of indictment by a grand jury[5] in cases of serious crimes.

This omission was remedied in the Bill of Rights, three of whose sections deal with the jury function. The fifth amendment guarantees the right to be indicted by a grand jury before an accused may be prosecuted for a serious offense.[6] The sixth amendment expands on the right to trial by jury in criminal cases.[7] And the seventh amendment provides for trial by jury in civil cases.[8]

ELABORATION OF THE CONSTITUTIONAL BASIS

Cases that concern the right to trial by jury illustrate a persistent problem of our federal system. The federal constitution enables and regulates the activities of the federal government. Thus, the jury provisions of article III, which sets up the judicial branch, and the provisions of the fifth, sixth and seventh amendments, appear initially to affect only the federal courts. The states form their own jurisdictions, with their own laws, judicial institutions, and police systems. But although all the states have provided for jury trial in one way or another, they have not done so uniformly. Some states provide jury trial for more, or for different, offenses than others. A person in Maine and another in New Mexico may commit identical offenses and, as a matter of state law, they may be tried in different ways—one may be tried with a jury and the other may be tried without a jury.

In certain instances, however, the potential lack of uniformity is remedied by the requirements of the federal constitution, which has come to be the guarantor of most of the important rights of the accused. In the fourteenth amendment, the constitution imposes on the states the requirements that they may not "deprive any person of life, liberty, or property, without due process of law." Because the constitution is the "supreme law of the land," it would violate the constitution, and thus would be unlawful, for any state to deny the right to jury trial if that act would deprive the defendant of "due process of law." The question of whether such a denial violates due process as meant by the constitution requires an interpretation of the constitution; the institution to which such interpretation is assigned is the United States Supreme Court.

It is characteristic of the federal system and of the work of constitutional interpretation that the answer to the great question of whether all citizens have a right to a jury trial (in a federal court or not) turned on a case in which a black teenager was accused of slapping a white boy on the elbow in a school incident that had racial overtones.[9] In Louisiana, where the incident occurred, the slap on the elbow was pros-

[3] An illustration can be found in the trial of William Penn (the founder, subsequently, of Pennsylvania) and William Mead in London in 1670. In this trial the jurors, although instructed by the court to do so, and although confined for two days without food or water, and finally fined and imprisoned, refused to find the defendants guilty of causing an unlawful assembly. The story is set out in an entertaining fashion in L. Moore, *The Jury* (Cincinnati: W. H. Anderson, 1973), pp. 86–89.

[4] "The trial of all Crimes, except in cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crime shall have been committed; but when not committed within any State, the Trial shall be at such place or places as the Congress may by Law have enacted."

[5] The prosecution of a serious offense generally must begin with an indictment by a grand jury. The most obvious difference between a *grand* jury and an ordinary (sometimes called a *petit* or *petty*) jury is the larger size of the grand jury: upward of 24 members. The important difference, however, is functional. The grand jury hears evidence concerning whether a crime has been committed, and it determines whether there is probable cause to believe that a particular person committed it. If it concludes that a certain suspect may have committed the crime, it returns a "true bill," and the person is said to have been "indicted," i.e., accused of crime. If the grand jury returns "no bill," the prosecution cannot go forward.

[6] "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury. . . ."

[7] "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. . . ."

[8] "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

[9] *Duncan* v. *Louisiana*, 391 U.S. 145 (1968).

ecuted as a battery[10]—a misdemeanor[11] that was punishable by up to two years' imprisonment and a $300 fine. The boy charged with the crime, Gary Duncan, requested a jury trial but was denied one by the trial judge because the Louisiana constitution granted the right to jury trial only in cases in which the punishment could include death or imprisonment at hard labor.

Duncan was convicted and was sentenced to serve 60 days in the parish prison and to pay a fine of $150. He appealed to the Louisiana Supreme Court, which refused to review his conviction inasmuch as it found "no error of law in the ruling complained of." Duncan then appealed to the United States Supreme Court.[12] He claimed that, if he were being tried in federal court and if a sentence as long as two years might be imposed, the sixth amendment required that a jury trial be granted. In such a case, he argued, the right to jury trial in *whatever* court was so fundamental that denial of the right would be a denial of due process of law. Thus the fourteenth amendment, which forbids any state to deprive a person of liberty without due process of law, thus required the state of Louisiana to grant Duncan a jury trial. In opposing the appeal, the state of Louisiana argued that the United States constitution imposed no duty at all *on the states* to grant jury trial, regardless of the gravity of the crime or punishment, because the sections of the constitution that dealt with jury trial were directed only toward the federal government.

The Supreme Court, in an opinion written by Justice Byron White, reversed Duncan's conviction because he had been denied the jury trial he sought in the state court. Because it believed

> that trial by jury in criminal cases is fundamental to the American scheme of justice, [the Court] hold[s] that the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee.

Because Duncan's demand for jury trial had been denied, the Court ruled, the constitution had been violated and his conviction could not stand.

The Court also referred to the question of which specific cases require jury trial. Not all cases do. Petty offenses, for instance, never have required jury trial. In *Cheff* v. *Schnackenberg*,[13] the Court said that the punishment that was authorized, not the punishment that was actually imposed, determined whether a crime was serious enough to warrant a jury trial.

The second important constitutional issue involving the criminal jury concerns not the availability of a jury trial but the nature of the trial itself, and especially the nature of the jury that will serve as the fact finder. The sixth amendment guarantees trial "by an *impartial*[14] jury of the State and district wherein the crime shall have been committed," i.e., impartial in performing its fact-finding function and impartial in determining the punishment. In *Fay* v. *New York*,[15] the Supreme Court held that a defendant was not entitled to a jury of any particular composition. Nonetheless, on a number of occasions it has addressed the question of what is—and what is not—an impartial jury; the issue is far from dead. At trial, the quest for an "impartial" jury has become a contest of wills between defense lawyers who naturally strive to choose a jury that will acquit their clients,[16] and prosecutors who attempt to eliminate

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[10] Although the words "assault and battery" commonly occur together, the offenses are not necessarily connected. An assault is the act of causing another person to expect death or bodily harm. A person may be assaulted when a gun (or something which looks like a gun) is pointed at him. A battery is a harmful or offensive touching of another person. A blow on the head from behind, then, can easily qualify as a battery, as can a slap on the elbow. In the first instance, where the gun is pointed at an individual, there has been assault without battery; in the second, there has been battery without assault.

[11] There are many possible ways of classifying criminal law violations, and the systems used in some states are quite complex. The most basic division, however, is between serious crimes (such as murder, rape, or armed robbery), which are called felonies, and lesser offenses (e.g., assault and battery, simple theft, and public drunkenness), which are called misdemeanors. Another group of violations are called "petty offenses" and involve the least serious conduct and the lightest penalties. Some traffic violations, for instance, fall into this category and present so little threat to society that the person charged is often permitted to admit guilt and to pay a fine by mail, thus avoiding a criminal record. In some states, crimes are considered to belong to one category that would be treated as elements of another category elsewhere.

[12] Under the federal statutes that regulate the jurisdiction of the United States Supreme Court (i.e., which specify which cases it can entertain), a criminal defendant may appeal to the Supreme Court from the highest court of any state, if that court has ruled on a challenge to a state statute on the grounds that it violates the United States constitution, and if it has determined that no such violation exists. No such appeal would have been possible had Duncan's argument in the Louisiana Supreme Court been based on the Louisiana constitution.

Possibly the best—and certainly the most readable—description, for lay readers, of an appeal to the United States Supreme Court appears in Anthony Lewis, *Gideon's Trumpet* (New York: Vintage, 1964), an account of the process by which the Supreme Court reached the conclusion, in *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), that the sixth amendment afforded criminal defendants the right to free legal counsel.

[13] 384 U.S. 373 (1966).

[14] Emphasis added.

[15] 332 U.S. 261 (1947).

[16] In an adversary system of dispute resolution, this is an entirely expectable, and not irrational, situation. It has been said that the best way to have a fair trial of an issue is to have two accomplished lawyers try in the most *unfair* ways possible to win the case for their side. Defense attorney F. Lee Bailey's reported remark during the course of the trial of Patricia Hearst, to the effect that he preferred "an acquitting jury" to "a fair jury," goes to the essence of this contest.

those who might sympathize with defendants. In *Witherspoon* v. *Illinois,*[17] for instance, a defendant challenged the Illinois jury selection process that allowed prosecutors in murder cases to challenge (and thus obtain the dismissal of) prospective jurors who stated during pretrial examination that they conscientiously objected to capital punishment. The Supreme Court held that a jury that had been selected in such a way could not represent a cross section of the community and could not have considered in an impartial manner the question of whether death was the proper penalty. In this case, the defendant was denied a trial before an impartial jury in violation of the constitution. His conviction was reversed.

In similar cases, *Peters* v. *Kiff,*[18] and *Taylor* v. *Louisiana,*[19] criminal defendants successfully argued that their right to trial by an impartial jury representing a cross section of the community was violated when blacks and women were systematically eliminated from the juries that tried them (the latter case concerned an argument that compulsory jury service would interfere with the "distinctive role in society" served by women). The Court was concerned, however, not with the composition of the actual jury used in the trial but rather with the composition of the pool from which the final jury was chosen.

A third constitutional issue involves waiver of jury trial and the question of whether there are some instances in which waiver will not be permitted. According to current law, waiver is always permitted, but the accused cannot be coerced into his decision by a divergence of punishment depending on whether or not he elects to be tried before a judge.[20] In *United States* v. *Jackson,*[21] the defendant was prosecuted under the Federal Kidnapping Act, which was worded in such a way that no death sentence could be imposed except by a jury. Waiver of jury trial thus guaranteed that the maximum penalty would be life imprisonment. The defendant moved to have the kidnapping count of the indictment against him dismissed, alleging that the federal act made "the risk of death" the price of the exercise of his constitutional right to a jury trial, thus impairing free exercise of the right. The United States District Court in which he was to have been tried agreed with him, and held that that section of the Kidnapping Act was unconstitutional. The Supreme Court agreed that the statute improperly encouraged jury waivers, and for that reason was constitutionally infirm.

A fourth and final issue is the question of unanimity, and whether the states must always provide a unanimous jury verdict. In two 1972 cases, *Johnson* v. *Louisiana*[22] and *Apodaca* v. *Oregon,*[23] the Supreme Court rejected arguments that a unanimous verdict was required in all jury trials for all crimes; the Court upheld convictions by verdicts of nine to three and ten to two in misdemeanor cases. The majority verdict is allowed in misdemeanor cases in Louisiana and Oregon and in Idaho, Montana, Oklahoma and Texas.

For all the importance attached historically to the jury system, it is not employed in as many cases as one might expect.[24] Sensational criminal cases are better known than cases involving petty crime, and it is the serious offense that is more likely to end in a jury trial. But, in fact, 64 percent of all defendants in federal courts pleaded guilty or *nolo contendere*[25] in fiscal 1972 and did not confront the charges against them. Another 20.6 percent had their charges dismissed for one reason or another. Only 15.3 percent had a trial of any kind, and half of those opted for trial by a judge. The percentage of defendants demanding jury trial fluctuates from year to year, but since 1945 it has averaged about 7.4 percent in United States district courts.[26] The value that the right to a criminal jury trial has for society, then, depends substantially on the deterrent effect it has on police, prosecutors and judges who know that their work may be scrutinized in any serious case and will be so scrutinized in a sampling of cases.

For those cases in which the jury system comes into play, the courts obtain their jurors from the immediate vicinity. When criminal defendants have been charged with misdemeanors or have been indicted for felonies by a grand jury, and after a date has been set for trial, a "venire"[27] is selected by lot,

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[17] 391 U.S. 510 (1968).
[18] 407 U.S. 493 (1972).
[19] 419 U.S. 522 (1975).
[20] Note that the choice referred to is between jury trial and trial before a judge. This is different from plea bargaining, which involves a choice to plead guilty and have no trial at all.
[21] 390 U.S. 570 (1968).
[22] 406 U.S. 356 (1972).
[23] 406 U.S. 404 (1972).
[24] The civil jury also accounts for the actual disposition of only a small fraction of all civil cases; in England it has fallen into almost total disuse since 1945.
[25] "I do not contest."
[26] United States Department of Justice, Law Enforcement Assistance Administration, *Sourcebook of Criminal Justice Statistics, 1973* (Washington, D.C.: United States Govt. Printing Office, 1973), pp. 318, 326.
[27] So called because the writ of *venire facias* is sent to the sheriff of the county, commanding him to "cause to come" the prospective jurors.

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"America's criminal justice system cost $14.95 billion in fiscal 1974, making it one of the largest government programs and one of the nation's leading industries. . . . Despite rhetoric about rehabilitation in corrections, correctional facilities are staffed primarily to discharge their mission to confine inmates securely."

American Prisons and Jails

By Melvin T. Axilbund
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Civil rights, criminal law reform, prisoners' rights, penal reform—all these great movements began during the 1960's. As the nation approaches the bicentennial of its independence, these movements are in various stages of fruition and decay. The quality of life in this country for many years to come will depend on their development early in America's third century. To promote enlightened discussion of the future shape of the correctional aspect of the United States criminal justice system, available information on confinement in this country must be considered.[1]

America's federal and state correctional facilities housed 250,000 prisoners as 1976 began.[2] This total was 11 percent higher than the 226,000 persons incarcerated at the start of 1975. The earlier record had been established in 1962, when the opening day count was 220,000. From 1962 through 1969, the population declined every year. From 1970 through 1973, small annual changes were noted, with from 195,000 to 200,000 persons in custody as each year began. (See chart, inside back cover.)

Although the 1976 prison population set a record, it was below the confinement rates of 1940 and 1960. In 1940, 132 persons, and in 1960, 119 persons, were confined per 100,000 persons in the civilian population. The 1976 rate was 118 prisoners per 100,000 persons.

Because of the limited criminal law jurisdiction of the federal government, these prisoners were for the most part in state institutions: only 24,135 persons, 9.7 percent of the 1976 total, were federal inmates.[3] Expressed as confinement rates, 1976 began with 11.4 federal prisoners and 106.3 state prisoners per 100,000 civilian population. (Table 1 depicts salient characteristics of the prison population.)

Inmates in federal and state prisons are overwhelmingly male. The 6,700 females confined at the beginning of 1974 were only 3.3 percent of the total incarcerated population. But they are the faster growing segment; from the start of 1972 to the start of 1974, the number of female prisoners rose 5.6 percent while the corresponding increase for males was 3.1 percent.

Of those persons confined on January 1, 1974, 128,000 or 62.5 percent represented commitments from court and persons returned to serve out old sentences during calendar 1973. Departures during 1973 totaled 114,000, including 8,000 escapees. Of those departing legitimately, 74 percent were conditionally released (mostly paroled), and 25 percent

[1] Any person working in this field must recognize certain data limitations. Criminal justice responsibilities are horizontally and vertically dispersed. No agency at any level of government is responsible for the collection and dissemination of all pertinent information. Consequently, the data available are not uniform. Some statistics are collected on a fiscal year basis, and various governments have different fiscal years. Even when fiscal years correspond, definitions may not. (For some purposes, for example, a jail may be a local correctional facility authorized to hold people for 48 hours or more. Other surveys shorten the time period to 24 hours, and thus include more facilities within their data base.) There is no after-the-fact way of adjusting for such differences. Consequently, readers are advised to exercise caution in making comparisons of data from different sources. In recognition of this problem, all data used in this article are rounded off in accordance with the usual rules. In a few instances, actual numbers are used because they have special significance. All data in this article are derived from the sources mentioned in the bibliography following this article. The only citations given are to the few ancillary sources used.

[2] *Corrections Magazine*, March, 1976.

[3] The federal prison total includes persons who, if under state supervision, would be jail inmates rather than prison inmates. Traditionally, the bulk of persons facing federal criminal charges have been housed, prior to sentencing, in locally operated jails under contract arrangements. The Federal Bureau of Prisons now has its own detention facilities in major urban areas (Chicago, New York, San Diego).

TABLE 1: Prison Inmate Data

Characteristics	*1970*
Number of prisons*	633
Number of inmates	198,900
Percent male	96.6%
Percent under age 20	8.3%
Percent black	40.6%
Percent never married	45.9%
Percent not completing secondary education (base—inmates 25 years and over)	75.3%

* "Prisons" is a broad term encompassing facilities of various degrees of security (from fully walled institutions to forest camps) and size (ranging from those accommodating thousands to a 14-bed community center in Minnesota). In January, 1974, there were 608 administratively separate facilities identified in the Census of State Correctional Facilities. There were also 47 federal facilities in 1974.

were released outright. 644 people died in prison in 1973. Women were conditionally released slightly more often than males, 77 percent versus 74 percent, and they more often used escape as a release mechanism, 8.6 percent versus 7 percent.

Data developed during the 1970 Decennial Census of Population provides the clearest demographic picture of those in prison. Prisoners are young. Persons under 25 years of age account for 34.3 percent of all prisoners. (In the general population, 45.8 percent are persons under 25; however, a variety of institutions for juveniles are more likely places of confinement than prisons for the most youthful offenders.) More than 68 percent of all prisoners are under 35 years of age. In the nation as a whole, 58.1 percent of the population is under 35.

Most prisoners are white; but there are relatively fewer whites in prison than in the general population. In prison, whites account for 57.6 percent of the population. For males and females, the respective percentages are 57.9 and 50.1. In the general population, the overall white percentage is 87.5 percent; males are 87.7 percent and females are 87.3 percent white.

Male prisoners are more likely to be single than female prisoners, 47.1 percent to 34.3 percent. This is also true in the general population, but to a much smaller degree, 19.1 percent and 13.7 percent, respectively.

The educational attainment of women prisoners is greater than that of males. Women had completed 10.2 median years of schooling, against 9.8 years for males. Comparable data for the general population is 12.3 years for males and 12.2 years for females. Male and female prisoners have had two years less schooling than their free counterparts. While 11.6 percent of the general population have completed college, only 1 percent of the prisoners have done so.

In 1970 and 1972, the Law Enforcement Assistance Administration made major efforts to collect information on local jails and inmates. These surveys, supplemented by findings of the 1970 Decennial Census, provide the principal source of uniform national data on these topics.[4]

The 1972 jail population of 141,600 was 12 percent below the 1970 total of 160,900. There were 68 jail inmates per 100,000 civilian population. The "average" 1972 jail held 36 inmates. These persons were overwhelmingly male—95 percent—and included substantially more blacks than were present in the general population—41.6 percent in jails compared to 11.1 percent generally. Other features of the jail population are noted in Table 2.

As large as the jail population is on a typical day, average daily count information represents a gross underestimation of the number of persons whose lives are affected by jails each year. Typical retention authority for jails is one year; consequently there is a virtually complete turnover in jail population within 12 months. (In prisons, on the other hand, where some inmates serve life sentences, there were 128,000 arrivals in 1973 and 114,000 departures, against a year-end population of 204,300, a substantially lower replacement rate than the replacement rate of jails.)

The actual number of persons passing through American jails in a year is at least one million and may be four million men, women, and children. This is the population equivalent of a very large city, or a medium-sized state, and is at least four times the number who annually pass through state and federal prisons combined.[5]

CORRECTIONAL INSTITUTIONS

As indicated in Tables 1 and 2, there are some 4,600 detention and correctional facilities nationwide. Texas has the most jails—318, and Georgia has 239; Vermont and Hawaii have only four each. In 1974,

[4] Since a jail was defined as a locally operated facility authorized to retain persons for 48 hours or longer, certain persons were excluded from enumeration. These are principally persons in police lock-ups and in the state-operated jails of Connecticut, Delaware, and Rhode Island. Since the treatment of these individuals was uniform, the impact of their exclusion from the jail population affects the totals presented but should not substantially undermine the relative quantities involved.

A potentially more substantial source of undercounting arises from the methodology employed. The 1972 survey involved collecting data from the jails identified in the 1970 jail census. That effort did not seek information from municipalities with a 1960 population of under 1,000. The 1972 Census of Governments found 9,664 such municipalities, giving rise to the possibility that the reported data on jail inmates is substantially understated.

[5] Hans W. Mattick, "The Contemporary Jails of the United States: An Unknown and Neglected Area of Justice," in Daniel Glaser, ed., *Handbook of Criminology* (New York: Random House, 1974), pp. 777, 780. See the discussion at *ibid.*, p. 795, for the basis of this estimate.

TABLE 2: Jail Inmate Data

Characteristics	*1970*	*1972*
Number of jails	4,037	3,921
Number of inmates	160,900	141,600
Percent male	95%	95%
Percent juvenile	4.8% (as defined by state law)	9% (under 18)
Percent serving sentences	42.9%	42.5%
Percent black		41.6%
Percent never married		49.8%
Percent not completing secondary education		65.2%

state penal institutions were most numerous in Georgia (76) and Florida (46) while six states had only one state-run institution—Idaho, Mississippi, Montana, Nevada, Rhode Island, and South Dakota. Three other states had only two institutions, three states had three institutions, and three had four institutions. The federal government operated 47 institutions.

The bed space available in these institutions cannot be stated with confidence. State institutions have a total of 100,600 one-inmate cells and 15,200 two-inmate cells. An additional 900 cells house three or four inmates. If these are distributed 50–50, available bed space in these quarters is 134,200. The balance of state prisoners are held in 2,000 "other quarters" that include dormitories and cells for five or more persons. As of July 19, 1974, the Federal Bureau of Prisons had the capacity to confine 20,500 prisoners "under acceptable conditions." Facilities with 1,350 beds have subsequently opened. (The January 1, 1967, BOP population was 24,134.) According to the 1970 Jail Census, 3,319 county and major (over 25,000 population) city jails had 97,891 cells. The capacity of these cells was not reported.

The original construction cost of the correctional plant is also unknown. The replacement cost of the federal institutions is estimated to be $350 million. Recent estimates have placed the per cell cost of new, maximum security construction at $40,000 or more. If construction cost over the full range of facility types averages only $20,000 per cell,[6] the replacement cost of the known number of cells for 1 to 4 persons would be $4.3 billion. In mid-1975, state and local governments had under construction or proposed new facilities for 36,000 persons. Their aggregate cost would be about $720 million at $20,000 per person.

There are two principal reasons for this massive, expensive construction program. The first is to alleviate overcrowded conditions in prisons and jails. In 1970, 5 percent of all jails reported they were overcrowded in varying degrees. Fourteen jails claimed to be exceeding their capacity by 300 or more inmates, a minimum of 4,200 people, or 2.6 percent of all jail inmates at that time. Overcrowded prisons appear to be epidemic.[7]

The other factor is age. The oldest institution—the McNeil Island Penitentiary in Washington—was opened as a territorial jail in 1865. The Atlanta Penitentiary opened in 1902 and the institution at Leavenworth in 1906. These older facilities are out of step with current penological thought. The Leavenworth facility, for example, allows only 18 square feet of living space per prisoner. New institutions provide three to four times as much space.

The picture at the state level is equally bleak. Twenty-four state facilities operating in 1974 were a century old. Of 577 facilities reporting the date of initial construction, 6 percent were begun before 1898. In 1971, there were 116 state maximum security institutions in operation. Fifty-six of these—half—opened before 1900; six opened before 1830.

The age of jails is known in terms of the age of individual cells. Over 11 percent of the cells in major jails are more than 75 years old; a fourth are at least 50 years old.

Consider these facts about the operation, programs, and services in prisons and jails:

- in 1970:
  - 86 percent of jails had no recreational facilities
  - 89 percent had no educational facilities
  - 49 percent had no medical facilities
  - 26 percent had no visiting facilities
  - 1.4 percent had no toilet facilities (these were institutions meeting the 48-hour retention authority definition).
- in 1972:
  - 44 percent of all jails had drunk tanks, but 7 percent lacked heat or light, 14 percent lacked toilets, 20 percent lacked drinking water, 40 percent lacked seating space. In 19 jails, all these "amenities" were absent from drunk tanks.
  - 2 jails served their inmates no food and 7 others only one meal a day. About two-thirds of the jails fed three meals daily. Forty-five of the jails serving food provided no hot meals.
  - Only one in eight jails had an in-house medical facility of any kind.
  - Although three-fifths of all jails provided some form of entertainment or recreation, 1,500 small- and medium-sized jails provided none. Although 16 percent of jails had an exercise yard, only 10 percent had any sports equipment. Half the jails had a radio and a fourth had a television.
  - Social and rehabilitative programs and services were available in many institutions. Federally

[6] $20,000 per cell may be a realistic average. Fifteen new federal facilities that opened in the last 5 years with 5380 bed spaces cost $20,585 per space.

[7] See "U.S. Prison Population Hits All-Time High," *Corrections Magazine*, March, 1976.

TABLE 3: Correctional System Cost and Employment (Fiscal Year 1974)

Activity	Amount ($'s amount in thousands)	Percent
Criminal justice system expenditures	14,953,661	100
Corrections expenditures*	3,240,396	21.67
Local governments	1,213,338	37.44
State governments	1,812,529	55.94
Federal government	214,529	6.62
Criminal justice system, full-time equivalent employees (October, 1974)	1,011,205	100
Corrections employees*	213,197	21.08
State governments	121,160	56.83
Institutional workers	95,164	78.54
Local governments	82,070	38.49
312 large counties	50,671	61.74
Institutional workers in 312 large counties	31,660	62.48
384 large cities	18,419	22.44
Institutional workers in 384 large cities	14,072	76.40
Federal government	9,967	4.67
Institutional workers	7,277	73.01

* Includes probation, parole and institutions for both adults and juveniles.

sponsored programs existed in 475 jails, with adult basic education the most common activity (215 jails). Vocational training was next in frequency, being available in 135 places. Non-federally sponsored programs existed in 2,646 or two-thirds of all jails. Religious services were the most common program (2,294 jails), followed by alcohol and drug treatment programs (1,385 and 1,028 jails respectively).

- in 1974:

Amenities in inmate quarters in state prisons varied widely.

86 percent of 205 institutions with one-inmate cells equip them with toilets, but only 38 percent provide drinking fountains. Sinks are available in 83 percent. A reading lamp is present in 41 percent of these quarters, a desk and chair in 51 percent, a window, in 50 percent. Cells for three and four inmates more often have toilets (89 percent), drinking fountains (50 percent) and sinks (89 percent), but a desk and chair less often (32 percent) and a reading lamp only infrequently (18 percent).

A dispensary existed in 84 percent of all prisons and a sick bay in 61 percent.

Of all inmates, 39 percent were held in maximum security, 34 percent in medium, and 27 percent in minimum.

For recreation, 78 percent of state institutions provided an athletic field, 34 percent a gymnasium, 83 percent a library, and 99 percent a general purpose room (for games, television, etc.).

Religious worship was the most commonly available rehabilitative program or service, being present in 96 percent of all state institutions. Individual counseling was available in 19 percent, remedial education in 89 percent. Work release programs were operated by 61 percent of the institutions.

Only 164 institutions, 28 percent of the total, operated prison industry programs.

CORRECTIONAL SYSTEM COST AND EMPLOYMENT DATA

America's criminal justice system cost $14.95 billion in fiscal year 1974, making it one of the largest government programs and one of the nation's leading industries. The system at all levels of government employed the equivalent of 1,011,205 full-time employees. Local governments expended the largest share of the dollars and employed two-thirds of the people; the federal government had the fewest employees and incurred the least cost.

Corrections at federal, state and local levels accounted for 21.7 percent of all criminal justice expenditures and 21.1 percent of the employees. Demonstrating that corrections are principally a state function, 56.8 percent of corrections workers were employed by states and 55.9 percent of the costs were incurred at that level of government. (Additional data are found in Table 3.)

Because correctional facilities vary widely in size, type, services and amenities, there are a bewildering array of per prisoner cost estimates available. To provide a "sense" of what corrections cost, consider these admittedly simplistic estimates:

592 state correctional institutions in 1974 housed 187,982 inmates. Total direct current expenditure of state governments for institutions (exclusive of those for juveniles) in fiscal year 1974 was $941,453,000. This represents $5,008 per inmate.

4,037 jails held 160,835 inmates on March 15, 1970. Their reported operating costs for fiscal year 1969 were $324,278,000. If the same num-

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BOOK REVIEWS

Readings on Justice in America

Abraham, Henry J. *Freedom and the Court.* New York: Oxford University Press, 1972.

American Friends Service Committee. *Struggle for Justice.* New York: Hill and Wang, 1971.

Ashman, Allan et al. *Laws of Arrest, Search, Seizure and Evidence.* Chapel Hill: Institute of Government, University of North Carolina, 1967.

Auerbach, Jerold S. *Unequal Justice.* New York: Oxford University Press, 1976.

Banfield, Edward C. *The Unheavenly City.* Boston: Little, Brown, 1970.

Barnes, Harry and Negley Teeters. *New Horizons in Criminology.* 3d ed. Englewood Cliffs, N.J.: Prentice-Hall, 1959.

Becker, Gary and William Landes. *Essays in the Economics of Crime and Punishment.* New York: Columbia University Press, 1974.

Bedau, Hugo Adam. *Justice and Equality.* Englewood Cliffs, N.J.: Prentice-Hall, 1971.

———, ed. *The Death Penalty in America,* rev. ed. Chicago: Aldine Publishing Co., 1968.

——— and C. M. Pierce, eds. *Capital Punishment in the United States.* New York: AMS Press, 1976.

Bennett, James V. *I Chose Prison.* New York: Knopf, 1970.

Black, Charles E., Jr. *Capital Punishment: The Inevitability of Caprice and Mistake.* New York: W. W. Norton 1975.

Bowers, William J. *Executions in America.* Lexington, Mass.: D. C. Heath, 1974.

Carter, Robert et al. *Corrections in America.* Philadelphia: Lippincott, 1975.

———, eds. *Correctional Institutions.* Philadelphia: Lippincott, 1972.

——— and Leslie T. Wilkins, eds. *Probation and Parole.* New York: John Wiley and Sons, 1970.

Clark, Ramsay. *Crime in America.* New York: Simon and Schuster, 1970.

———, ed. *Crime and Justice.* New York: Arno, 1974.

Conrad, John P. *Crime and Its Correction: An International Survey of Attitudes and Practices.* Berkeley: University of California Press, 1970.

Devlin, Patrick. *The Enforcement of Morals.* New York: Oxford University Press, 1970.

DeWolf, Burton H. *Pileup on Death Row.* New York: Doubleday, 1973.

Drabek, Thomas E. and Gresham Sykes. *Law and the Lawless.* New York: Random House, 1969.

Feenery, Floyd and Adrienne Weir, eds. *The Prevention and Control of Robbery.* Davis: University of California Center for the Administration of Criminal Justice, 1973.

Fox, Vernon. *Violence Behind Bars: An Explosive Report on Prison Riots in the U.S.* New York: Vantage Press, 1969.

Frankel, Marvin E. *Criminal Sentences: Law Without Order.* New York: Hill and Wang, 1972.

Friedman, Lawrence. *A History of American Law.* New York: Simon and Schuster, 1973.

———. *The Legal System: A Social Science Perspective.* New York: Russell Sage, 1975.

Geis, Gilbert and Herbert A. Bloch. *Man, Crime and Society.* New York: Random House, 1962.

Gibbs, Jack P. *Crime, Punishment, and Deterrence.* New York: Elsevier, 1975.

Gillmor, Donald M. *Free Press and Fair Trial.* Washington, D.C.: Public Affairs Press, 1966.

——— and Jerome A. Barron. *Mass Communication Law: Cases and Comment.* St. Paul, Minn.: West Publishing Co., 1974.

Ginsberg, Morris. *On Justice in Society.* Baltimore: Penguin Books, 1965.

Glaser, Daniel. *Adult Crime and Social Policy.* Englewood Cliffs, N.J.: Prentice-Hall, 1972.

———. *The Effectiveness of a Prison and Parole System.* Indianapolis: Bobbs-Merrill, 1969.

———, ed. *Crime in the City.* New York: Harper and Row, 1970.

———, ed. *Handbook of Criminology.* New York: Random House, 1974.

Goldfarb, Ronald. *Jails: The Ultimate Ghetto.* New York: Doubleday, 1975.

———. *Ransom: A Critique of the American Bail System.* New York: Harper and Row, 1965.

——— and Linda R. Singer. *After Conviction.* New York: Simon and Schuster, 1973.

Goldman, Sheldon and Thomas P. Jahnige. *The Federal Courts as a Political System,* 2d ed. New York: Harper and Row, 1976.

Green, Edward. *Judicial Attitudes in Sentencing.* New York: St. Martin's Press, 1961.

Griswold, H. Jack et al. *An Eye for an Eye.* New York: Holt, Rinehart and Winston, 1970.

Harris, Janet. *Crisis in Corrections: The Prison Problem.* New York: McGraw-Hill, 1973.

Harris, Richard. *Justice.* New York: E. P. Dutton, 1970.

Hartung, Frank E. *Crime, Law and Society.* Detroit: Wayne State University, 1965.

Hazelrigg, Lawrence, ed. *Prison Within Society.* New York: Doubleday, 1968.

Irwin, John. *The Felon.* Englewood Cliffs, N.J.: Prentice-Hall, 1970.

Ives, George. *A History of Penal Methods.* Montclair, N.J.: Patterson Smith, 1970.

James, Howard. *Crisis in the Courts.* New York: David McKay, 1968.

Johnston, Norman et al., eds. *The Sociology of Punishment and Correction,* 2d ed. New York: John Wiley and Sons, 1970.

Kalven, Harry and Hans Zeisel. *The American Jury.* Boston: Little, Brown, 1966.

Kamisar, Yale et al. *Criminal Justice in Our Time.* Charlottesville: University of Virginia Press, 1965.

Kassebaum, Gene et al. *Prison Treatment and Parole Survival.* New York: John Wiley and Sons, 1971.

Keve, Paul. *Imaginative Programming in Probation and Parole.* Minneapolis: University of Minnesota Press, 1967.

LaFave, Wayne R. *Arrest: The Decision to Take a Suspect into Custody.* Boston: Little, Brown, 1965.

LEAA National Instiute of Law Enforcement and Criminal Justice. *Reducing Court Delay.* Washington, D.C.: U.S. Government Printing Office, 1973.

Lerman, Paul. *Community Treatment and Social Control.* Chicago: University of Chicago Press, 1975.

Levy, Leonard W. *Against the Law: The Nixon Court and Criminal Justice.* New York: Harper and Row, 1974.

Lipton, Douglas et al. *Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies.* New York: Praeger, 1975.

McCloskey, Robert G. *The American Supreme Court.* Chicago: University of Chicago Press, 1960.

Meltsner, Michael. *Cruel and Unusual: The Supreme Court and Capital Punishment.* New York: Random House, 1973.

Menninger, Karl. *The Crime of Punishment.* New York: Viking Press, 1969.

Minton, Robert J. *Inside: Prison American Style.* New York: Random House, 1971.

Mitford, Jessica. *Kind and Usual Punishment.* New York: Knopf, 1973.

Morris, Norval. *The Habitual Criminal.* Westport, Conn.: Greenwood Press, 1973.

———. *The Future of Imprisonment.* Chicago: University of Chicago Press, 1974.

——— and Gordon Hawkins. *The Honest Politician's Guide to Crime Control.* Chicago: University of Chicago Press, 1970.

Nagel, Stuart. *Comparing Elected and Appointed Judges.* Beverly Hills: Sage Publications, 1973.

———. *Improving the Legal Process.* Lexington, Mass.: Lexington Books, 1975.

———. *Modeling the Criminal Justice System.* Beverly Hills: Sage Publications, 1977.

——— and Marian Neef. *Policy Optimizing Models and the Legal Process: Maximizing Goals in the Criminal Justice System.* Lexington, Mass.: Lexington Heath, 1976.

———. *The Policy Problem of Doing Too Much or Too Little: Pretrial Release as a Case in Point.* Beverly Hills: Sage Publications, 1976.

Nagel, William G. *The New Red Barn: A Critical Look at the American Prison.* New York: Walker, 1973.

National Advisory Commission on Criminal Justice Standards and Goals. *Criminal Justice System.* Washington, D.C.: U.S. Government Printing Office, 1973.

National Advisory Commission on the Causes and Prevention of Violence. *Law and Order Reconsidered.* Washington, D.C.: U.S. Government Printing Office, 1969.

Neiderhoffer, Arthur. *Behind the Shield: The Police in Urban Society.* New York: Doubleday, 1967.

New York State Special Commission on Attica. *Attica.* New York: Bantam Books, 1972.

Newman, Oscar. *Defensible Space.* New York: Macmillan, 1972.

Oaks, Dallin H. and Warren Lehman. *A Criminal Justice System and the Indigent.* Chicago: University of Chicago Press, 1968.

Pell, Eve, ed. *Maximum Security: Letters.* New York: E. P. Dutton, 1972.

Posner, Richard. *Economic Analysis of Law.* Boston: Little, Brown, 1973.

President's Commission on Law Enforcement and Administration of Justice. *The Challenge of Crime in a Free Society.* Washington, D.C.: U.S. Government Printing Office, 1967.

———. *Task Force Report: Corrections.* Washington, D.C.: U.S. Government Printing Office, 1967.

Rosenberg, Maurice. *The Pretrial Conference and Effective Justice.* New York: Columbia University Press, 1964.

Rothman, David J. *The Discovery of the Asylum.* Boston: Little, Brown, 1971.

Sarbin, Theodore R. *The Myth of the Criminal Type.* Middletown, Conn.: Wesleyan University Press, 1969.

Saunders, Charles. *Upgrading the American Police.* Washington, D.C.: Brookings, 1970.

Schick, Allen. *Budget Innovation in the States.* Washington, D.C.: Brookings, 1971.

Schur, Edwin M. *Crimes Without Victims—Deviant Behavior and Public Policy.* Englewood Cliffs, N.J.: Prentice-Hall, 1965.

———. *Our Criminal Society: The Social and Legal Sources of Crime in America.* Englewood Cliffs, N.J.: Prentice-Hall, 1969.

——— and Hugo Adam Bedau. *Victimless Crimes: Two Sides of a Controversy.* Englewood Cliffs, N.J.: Prentice-Hall, 1974.

Silverstein, Lee. *Defense of the Poor: The National Report.* Boston: Little, Brown, 1965.

Skolnick, Jerome H. *Justice without Trial: Law Enforcement in Democratic Society.* New York: John Wiley and Sons, 1966.

——— and Thomas Gray. *Police in America.* Boston: Little, Brown, 1975.

———. *Rural Crime Control.* New York: Arno, 1974.

Sykes, Gresham. *Crime and Society,* 2d ed. New York: Random House, 1967.

———. *The Society of Captives.* Princeton: Princeton University Press, 1971.

Trebach, Arnold S. *The Rationing of Justice.* New Brunswick, N.J.: Rutgers University Press, 1964.

Tullock, Gordon. *The Logic of the Law.* New York: Basic Books, 1971.

Twentieth Century Fund Task Force on Criminal Sentencing. *Fair and Certain Punishment.* New York: McGraw-Hill, 1976.

U.S. House of Representatives, Select Committee on Crime. *American Prisons in Turmoil.* Washington, D.C.: U.S. Government Printing Office, 1972.

Von Hirsch, Andrew. *Doing Justice: The Choice of Punishments.* New York: Hill and Wang, 1976.

Wicker, Tom. *A Time to Die.* New York: Quadrangle/The New York Times Book Co., 1975.

Wilkins, Leslie T. *Evaluation of Penal Measures.* New York: Random House, 1969.

———. *Social Deviance: Social Policy, Action and Research.* Englewood Cliffs, N.J.: Prentice-Hall, 1965.

Wilson, James Q. *Thinking About Crime.* New York: Basic Books, 1975.

———. *Varieties of Police Behavior.* New York: Atheneum, 1970.

Wisenand, Paul M. and Tug T. Tamara. *Automated Police Information Systems.* New York: John Wiley and Sons, 1970.

Zeisel, Hans et al. *Delay in the Courts.* Boston: Little, Brown, 1959.

Virginia C. Knight ■

STATE COURT ORGANIZATION

(Continued from page 256)

New York City have rioted to protest crowded jail conditions; more important, they have vigorously protested court policy denying bail to most poor offenders and extremely crowded court calendars that force the poor to remain in jail for three or even six months awaiting trial. Thousands of the accused had not yet been convicted of any crime. But because court procedures are so slow and because traditional bail policy usually denies money, bail or personal bond to most poor offenders, prisoners were held in extremely crowded jails, waiting for months for the courts to work through the case backlog. Convicts in state prisons have also protested unequal sentencing, in which judges have meted out short and long prison terms to different defendants for similar offenses. Thus, seemingly routine bail and sentencing decisions have a cumulative effect on prison populations, and prisoners are loudly voicing their objections to perceived injustices.[15]

Traditional and complex court organization and old rules and ways of conducting court business often make American state court systems difficult to understand and even more difficult to cope with. Many states have tried to modernize their courts, but court reformers must usually overcome serious opposition from traditional supporters of the existing court system. Frequently, alterations in court structure are made piecemeal. Complex court organizations combined with traditional court policies may also become important political issues, affecting classes of citizens who are direct recipients of court decisions and procedures. Although prisons are a dramatic case, court policies also affect groups in society who use the courts to solve problems or to remedy claimed injustices. Consequently, daily, seemingly picayune decisions of American state courts can be crucial in affecting our lives. ■

[15] Burton M. Atkins and Henry R. Glick, eds., *Prisons, Protest and Politics* (Englewood Cliffs, N.J.: Prentice-Hall, 1972) and Henry Robert Glick and Kenneth N. Vines, *State Court Systems* (Englewood Cliffs, N.J.: Prentice-Hall, 1973).

FEDERAL COURTS

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tion of witnesses, the presentation of the defense, to the oversight of the judge's rulings and conduct during the trial. If the case does not go to trial (and most cases do not), then the skill of the lawyer is important for plea-bargaining negotiations to get the best possible "deal" from the prosecutor.

Plea bargaining is widespread and is widely acknowledged to be crucial to the court system's survival. But plea bargaining raises serious problems with regard to the goal of uniform standards of justice. It goes on behind closed doors, and the kind of bargain reached depends heavily not only on the negotiating skills of the lawyer (and prosecutor) but also on the lawyer's relationship to the prosecutor, judge and defendant. Irresistible pressures often induce innocent persons to confess falsely. On the other hand, the guilty can obtain bargain-basement justice in which serious charges and penalties are reduced in return for the plea of guilty.

Criminal sentencing by trial judges has received much deserved attention in recent years. Studies of sentencing disparities suggest that the goal of equal justice under law is far from being achieved,[15] although there is controversy over the definition of "equal justice." Some suggest that the punishment should fit the crime, and that judicial discretion should be minimized. Others argue that punishment should fit the crime and the criminal and that it is best to allow judges latitude to fashion the punishment appropriate for each individual. If plea bargaining is involved, and it is involved in most criminal cases, the sentence is tied to the bargain, in effect, the judge to some degree delegates sentencing discretion to the prosecutor.

The goal of a uniform application of criminal justice standards is frustrated when different courts, particularly at the appeals court level, disagree as to what those standards are. Although the Supreme Court should resolve these intercircuit conflicts, in practice it takes time for the Court to come to grips with them, if it chooses to do so at all. The proposed national court of appeals (discussed earlier) is in part designed to settle more of these intercircuit conflicts and to do so faster.[16]

For a variety of historical reasons, the federal courts are now deeply involved in the administration of criminal justice across the entire nation. The problems and challenges have proved to be immense. Whether or not there are "solutions" to the problems of administration of criminal justice remains to be seen. It is not yet clear how far the federal courts, and particularly the Supreme Court, will go on the recent course of lowering standards of criminal justice (from the standpoint of the rights of defendants) and reducing federal oversight of criminal justice in the states. ■

[15] See the discussion and references in Goldman and Jahnige, *op. cit.*, pp. 196–199.

[16] Of course, considerably more "reforms" could be considered, but we are unable to do so here. Suffice it to note that it is still an open question whether it is possible to formulate proposals effectively to provide equal justice in terms of legal representation, plea bargaining and sentencing, and at the end of the criminal justice line in terms of the prison and parole systems.

THE DEVELOPMENT OF THE URBAN POLICE

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in controlling crime; although there is a good deal the police can do about many types of crimes—far more than most police departments now do—it is not realistic to expect the police to *prevent* crime, and it is certainly not reasonable to blame them for increased crime.

These newer evaluations about the police and their function have important implications for the way in which people are selected and prepared for police work. If the police function is a broad service one, the qualities required for police work include judgment, intelligence, compassion, a commitment to service, and the ability to exercise a high degree of discretion.

There are also important implications for the police organization. When police departments were regarded as armies fighting a war on crime, it was sensible to organize them like armies, with military uniforms and ranks, requiring saluting, standing at attention, and marching to roll call for inspection and instruction.

But if the police have a highly discretionary role, to be performed by people of intelligence and judgment, the police department must be organized differently, especially because the very people required to perform the role have little patience with military forms. Perhaps police officers should be organized in small teams, composed of people with different skills who can be trained to perform different specialties.[12]

The reassessment of the police role has affected police operations as well. It has been assumed that police officers spend much of their time patrolling the streets because they are deterring crime. Some of the work recently done by the Police Foundation, particularly the Kansas City preventive patrol experiment, has cast substantial doubt on that assumption.[13] It appears that the crime prevention value of routine preventive patrol is negligible. If that is true, there is little justification for police officers' spending large periods of time driving around on the streets, especially when they could be engaged in important work.

A great deal of thought is being given to rearranging the way in which police departments operate, to give officers tasks for which they have been prepared, and which they can perform—advising merchants on crime prevention techniques, visiting the homes of troubled juveniles, counseling teenagers, and so forth.

A broad issue is the question of accountability, one of the themes of the last ten years. At first, people advocated "civilian review" of police actions to make police departments accountable. That notion has been replaced by accountability through elected officials. This is not to suggest that the police department be dragged back into politics. Rather, it is a recognition that the city's chief elected official or officials are the only people directly responsible to the public for the performance of city government agencies. So mayors, city managers, city council officers and other elected officials ought to be responsible for police performance. In some places, they are being asked to take more active responsibility for determining police policy on important issues like the use of firearms and enforcement priorities, and to decide how much money the police department will receive for constructing new buildings, hiring new personnel, and buying new equipment.

THE FUTURE

The major issues—function, personnel, organization, operations and accountability—remain unsettled. The agenda for change is formidable, all the more formidable because answers are not readily available. Among the requirements is the establishment of a high quality of leadership, drawn from the nation's largest police departments.

By leadership, I do not mean the traditional concept of the leader who stands in front of the troops as they rush into battle. Nor am I speaking of the police leader who eagerly defends his agency against all efforts to change it. The modern police leader should be an individual of intelligence, education, breadth, understanding, and compassion, with a commitment to change and the intellectual discipline and political/administrative skill to achieve change.

That kind of leader should also have a commitment to research and experimentation, which is particularly important to the improvement of policing. It is gratifying that (at least in some quarters), after a century of neglect, there is at last recognition that the police department is an important institution in which society has a high stake.

There is no aspect of the police department—its functions, organization, operations, and personnel—about which there is enough knowledge to make rational choices. Enough knowledge will not be gained unless leaders in the field and leaders of the public have a commitment to research and experimentation. That does not seem to be the case in many instances.

It is equally important that police leaders be frank

[12] That is why there has been so much experimentation during the past ten years with a new form of police organization called "team policing," discussed in Lawrence Sherman, Catherine Milton, and Thomas Kelly, *Team Policing* (Washington, D.C.: Police Foundation, 1973).

[13] That experiment is described in George Kelling, Tony Pate, Duane Dieckman, and Charles E. Brown, *The Kansas City Preventive Patrol Experiment* (Washington, D.C.: Police Foundation, 1975).

with the public about crime, the issue which concerns citizens most when they survey law enforcement. The police can do far more than they do about many types of crime. For example, the police can, with considerable effect, deploy plainclothes decoy units in tactics that have been proved successful in apprehending violent street criminals.[14]

But the police leadership must make it clear that the police are only the most visible sector of a highly fragmented criminal justice system that, for the most part, is failing to combat crime because of its disorganization at all levels. In most cities and within most states, the police, the prosecutors' offices, the judiciary, and corrections do not mesh to perform the job they are supposed to do. Criminal justice in America is a hit and miss affair that must be reformed before we can suppose that police detection and apprehension of criminals will substantially lower crime rates and will make our cities safer.

Police leadership must also be frank to point out that even the most efficient and effective police department within a reformed and well-coordinated criminal justice system is limited in what it can do about crime. Much crime has its roots in social and economic conditions like poverty, unemployment, racial discrimination, and alcohol and drug abuse, conditions about which the police and the criminal justice system can do little.

Today's police leadership, if it is to be effective, must help to teach the public that, as long as social and economic ills are allowed to flourish, so will crime. ■

[14] This does not mean that police departments need fewer police officers or that patrol has no value. The size of police departments ought to be based on the demands for their service; and patrol has great value in distributing police officers around the city so that they can respond quickly to citizen needs.

THE FEDERAL ROLE

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Federal criminal law enforcement rests essentially on the work performed by the numerous investigative organizations of the federal government. Within the Department of Justice, the investigative function is the responsibility of the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), and the Immigration and Naturalization Service (INS).

The FBI investigates most federal violations, collects evidence in cases in which the United States is or may be an interested party, and performs other duties specifically imposed by law. Particular emphasis is placed on investigations concerning terrorism, organized crime and white-collar crime.

Investigations of possible federal drug law violations are conducted by the Drug Enforcement Administration. The enforcement functions of the DEA are designed to suppress illicit drug trafficking on a national and worldwide basis. The activities of the DEA encompass the investigation of those who have violated federal drug trafficking laws and those from whom illicit drugs have been seized at United States and international borders. A major effort is directed toward the arrest and conviction of the highest-level violators.

The Immigration and Naturalization Service performs enforcement functions associated with the immigration and nationality laws of the United States. Its investigators and border patrol agents enforce the immigration laws by preventing the illegal entry of aliens into the United States, and by apprehending those who enter surreptitiously and those who have violated the terms of their lawful admission.

In addition to those investigations, other federal departments and agencies conduct certain kinds of investigations for which they are responsible under federal law. Included among these agencies are the Secret Service, the Bureau of Customs, the Alcohol, Tobacco and Firearms Division of the Treasury Department, the United States Postal Service, the Securities and Exchange Commission, and the United States Coast Guard. A number of departments and regulatory agencies investigate criminal violations in their own area of statutory responsibility, and make referrals to the Justice Department. After a possible violation of federal law has been investigated, the investigative agency presents the facts of the case to the appropriate United States Attorney or Department of Justice lawyer, who then determines whether or not prosecution or further investigative action is warranted. The investigative agency does not decide whether an individual should be prosecuted.

FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

The expanding role of the federal government in criminal law enforcement has not altered the basic allocation of responsibility between it and its state and local counterparts. Our concepts of federalism and the local nature of much crime dictates the still preeminent role of non-federal activity. Within the Department of Justice, support to state and local governments in their efforts against crime is afforded primarily by the Law Enforcement Assistance Administration (LEAA), the Federal Bureau of Investigation, and the Drug Enforcement Administration.

LEAA is the only federal agency with the specific mission of improving the entire criminal justice system of the United States through a comprehensive program of assistance at all levels. The federal gov-

ernment now supplies financial resources—almost one billion dollars a year—technical assistance, and leadership to the states and localities, which must set their own crime control priorities, devise specific action programs and allocate LEAA funds according to their own carefully developed plans. Funding takes the form of block grants to states on the basis of population and discretionary grants to state, city and local agencies. LEAA seeks to increase the effectiveness of state and local criminal justice systems by directing its funds into programs concerned with the police, courts, corrections, juvenile justice, organized crime, drug abuse, criminal justice research and education, the development of information and communications systems, the formulation of standards and goals, crime victim surveys, and the designing of more secure working and living environments.

State and local law enforcement agencies also have access to the cooperative services of the Federal Bureau of Investigation, which are provided by the FBI Laboratory, the Training Division of the FBI Academy, the FBI Identification Division and the FBI Computer Systems Division.

The FBI Laboratory conducts examinations in the field of forensic science, approximately 30 percent of which are carried out on a cost-free basis for agencies other than the FBI. A Laboratory Research Group performs scientific research in the biological, physical and chemical sciences, to aid local crime laboratories and to give them the capability of examining, on a sound and scientific basis, such diverse kinds of physical evidence as hair, blood and other bodily fluids, paints, plastics, metals, glass, fibers, soils, and explosive residues. The Training Division of the FBI National Academy in Quantico, Virginia, provides instruction to federal, state, and local law enforcement personnel with regard to investigatory techniques. Programs of the academy include training in the investigation of organized crime, white-collar crime, including computer fraud, and fingerprinting and other scientific techniques.

Specially trained FBI agents assigned to the Bureau's 59 field offices also provide instruction at law enforcement schools on topics ranging from basic law enforcement to such specialized matters as kidnappings, hostage situations, extremist groups and organized crime. The FBI Identification Division maintains the world's largest collection of fingerprints and provides vital identification services to state and local law enforcement agencies. Progress is being made in the development of a computerized fingerprint scanner, the FINDER, an automated fingerprint identification system.

The Computer Systems Division provides the FBI and law enforcement agencies throughout the nation with a broad range of data processing services. Its National Crime Information Center (NCIC) rapidly provides records relating to fugitives and stolen cars and other property to FBI field offices and to other criminal justice agencies in the United States. The NCIC computer also maintains criminal history records. Furthermore, the Computer Systems Division compiles crime statistics that are used extensively by federal, state and local officials for planning, budgeting, disbursement of federal grants, legislation and analyses of the crime problem.

Investigators from the Drug Enforcement Administration also cooperate with state and local officials on joint enforcement efforts. The DEA laboratory is available to state and local agencies for the analysis and identification of suspected drugs. DEA's academy provides instruction in training methods, drug unit management and investigative techniques to state and local police officers.

Across the board, federal agencies attempt to extend a maximum of cooperation to their state and local counterparts in law enforcement while striving to set the highest standards of investigation and prosecution of criminal wrongdoers.

CONCLUSION

At the time of the founding of the Republic, the states exercised almost exclusive jurisdiction over criminal offenses. The federal government's responsibility was limited to crimes like treason, piracy, revenue violations, customs offenses, and postal crimes. Over the course of 200 years, the United States grew in population and expanded geographically; urban centers developed; perhaps most significantly, the nation's economy matured into a vast and complex pattern—and the lines of interstate and foreign commerce extended far beyond the abilities of the states to regulate individually. Thus the federal government came to shoulder a greater share of the responsibility for defining criminal offenses and for enforcing criminal laws. In short, the development of the federal role in law enforcement and the growth of the Criminal Division reflects a practical adaptation over the years to the changing needs of society. As society continues to change, so will the response of the Department of Justice and its various elements. ■

THE CRIMINAL JURY

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usually from the voting lists. The "venire" is the group of citizens who will actually be called into court to be examined as to their qualifications to serve as jurors.

The examination may take the form of questions about whether a juror is related to, knows, or has had business dealings with the defendant, about the juror's ability to render an impartial verdict in the case, and

about possible excuses the juror may have for not serving on the jury. If the juror is not disqualified or excused for any of these reasons, he or she may be eliminated from the jury through the system of peremptory challenges by which lawyers for the government and for the defense simply ask to have the juror excused. They are not required to give any reason. Normally a certain number of peremptory challenges are allowed to each side; the defense may be allowed extra strikes, to ensure that the defendant will have ample opportunity to eliminate any potential unfairness. In the case of *Swain* v. *Alabama*,[28] the United States Supreme Court left undisturbed an Alabama system in which the prosecution and defense started with the unexcused jurors and eliminated members (two challenges for the defense to every challenge for the prosecution) until they reached a jury of 12. The defendant claimed that the peremptory challenge system had resulted in a situation in which not only in his own trial but in every other Talladega County, Alabama, trial, civil and criminal, within memory, no black juror had ever participated.

Once the jury has been selected, jurors take an oath to the effect that they will consider only the evidence presented to them and that they will return an impartial verdict. The prosecution then makes an opening statement, in which the prosecutor explains the case and tells the jury what (in the government's estimation) the evidence will show. Because the government must go forward with evidence, the prosecutor calls witnesses who testify to evidence they have seen and heard; he introduces physical evidence of the crime (e.g., a weapon, an object with fingerprints on it, a piece of clothing) if any exists; he questions those who have knowledge of the events that form the basis of the prosecution. If it appears to defense counsel that the answers that will be elicited by the prosecutor's questions will not be proper evidence, he will state objections when the questions are asked, before the witness has answered. The question of whether the answer would be admissible under the rules of evidence that the court follows is a question of law, so the objection is made to the judge, not to the jury. The judge answers by sustaining or overruling the objection; if he thinks that the judge has answered the question incorrectly, the defense attorney may take exception to the answer. The exception can form the basis of an appeal later on, in which the defendant will claim to an appeal court that his conviction was based on improper evidence. Again dealing with questions of law, the appeal court will affirm the conviction, therefore approving the decision of the trial judge, or it will reverse the conviction, sending the defendant back to court for a new trial or ordering his release.

One of the central problems of the jury system is brought into focus if improper testimony is actually given, or if there is an incident disturbing to the process of evidence-weighing or disruptive of the peace of the courtroom.[29] In that event, in order to protect the defendant's right to an impartial jury verdict, the judge will either grant a mistrial and start again with a new jury, or he will instruct the jury to disregard the evidence or the incident. How effective such instruction can be is questionable.

With the prosecution's case completed, the judge answers another legal question—whether or not to allow the jury to consider the case at all and give its verdict. The prosecution not only has the burden of introducing evidence that will convince the jury beyond a reasonable doubt in order to win its case in the jury room, it must also introduce a minimum *amount* of credible, admissible evidence; if the prosecution has not carried that burden, the defense will move for a directed verdict of acquittal. If the court agrees with the defense, it will direct the jurors to return a verdict of not guilty, and the jurors will have no opportunity to do otherwise. If the court does not agree, the trial will continue. The defendant will introduce evidence to show that he did not commit the crime, or to show lack of intent, or to show insanity, or to raise some other defense. He may introduce character witnesses, and may testify himself (though he cannot be required to do so). When either the prosecution or the defense put witnesses on the stand, the other side may cross-examine them to point out inconsistencies in their testimony and to show it to have little credibility.

At the end of the trial, the prosecutor and the defense attorney make summations or closing arguments to the jury, in the same order in which they began their cases. The defense thus has the last opportunity to address the jury. The judge then instructs the jury on the law of the case to be applied to its findings of fact, and the attorneys may submit requests for specific instructions to be given. The jury retires to consider the verdict. It may communicate with the judge to ask for clarification of his instructions, and it may request that testimony be read back to it by the court reporter. When the jury has completed its deliberations, it votes for or against conviction; in most serious cases, the vote must be unanimous. After unanimity or otherwise sufficient agreement is reached, the verdict is announced in open court. In order to uncover any pressure that may have been applied by other jurors in the jury room, the jurors may be asked individually to confirm that they concurred in the verdict—a process called "polling" the jury. If the jury was

[28] 380 U.S. 202 (1965).

[29] As was the case during the murder trial of Charles Manson, when Manson displayed to the jury a newspaper whose headlines disclosed that President Richard Nixon had commented publicly on his case.

also instructed to determine the appropriate penalty, that will also be announced unless sentencing takes place after a separate hearing or is handled by the court without jury participation. If the jurors have not been able to reach sufficient agreement, the foreperson reports this fact to the court, which dismisses the jury. A new trial is held at a later date if the prosecution desires one.

At that point, the jury's work is done. Unless one or more of the jurors is willing to discuss it, the content of the jury deliberations will not be revealed. Under the jury system, the jury may make up its mind in any of a number of ways: by following the judge's instructions carefully; by ignoring them and voting its common sense; or by selecting some completely arbitrary means of assigning guilt (e.g., by striking a bargain with any jurors who may favor acquittal to the effect that the defendant will be acquitted on the more serious counts of his indictment but convicted on the less serious charges). Of course, ignoring the judge's instructions or bargaining with the jurors violate the law as well as the jurors' oath.

Especially if it feels that the prosecutor's discretion to prosecute has been abused and that the prosecution of the defendant is essentially a form of harassment, the jury may ignore the instructions of the judge and find the defendant not guilty. Normally, there is no appeal open to the government; once acquitted by the jury, the defendant cannot be retried. The jury can vary the outcome of a case by changing its findings of fact; the result will be the same as if the law had prescribed a different penalty. If that happens it is, of course, a political act. It substitutes the jury's will for the will of the legislature that created the law and the will of the judge who instructed on the law.

This form of "jury lawlessness" can protect the community from judges who (in most states) must be reelected to office periodically, and who may thus find it to their disadvantage, especially in a notorious case, to be as attentive to the rights of the accused as they would like to be and as the law requires them to be. The jury may also represent the true feelings of the community as to the wisdom of certain sections of the criminal law (e.g., those involving "victimless crimes," like illicit drug use, prostitution, gambling, or homosexual acts) more accurately than the legislature, influenced as the legislature is to some extent by highly partisan special interest groups.

On the other hand, "jury lawlessness" is a double-edged tool. The jury that may find a marijuana smoker not guilty because of its conviction that the law is ineffective and irrational in that area may do the same for the violator of a gun registration ordinance, and for the same reasons. And the jurors who acquit a defendant because they suspect police perjury may just as easily convict another defendant because of his race or his politics.

Whether or not the complex procedure of the criminal jury in this country is the best way to resolve the problems of criminal conduct is, of course, open to question. If we compare the jury system to a system of judge-tried cases, the main differences will appear to be questions of cost and delay. Jury trials are longer and involve more people than non-jury trials; thus they cost more (public) money. On the other hand, the jury trial is approximately as reliable as a trial before a judge; judge and jury tend to agree in their conclusions in a remarkable number of instances —80 percent of the time, according to one study.[30]

But to ask whether the special advantages of jury trial to the society are "worth" the extra money and time involved, even for the very small percentage of defendants who are prosecuted before a jury, is to ignore the real reasons for the existence of the jury, whose "costs" historically were not measured at all. Any quantification of jury effectiveness requires us to assign some value to (1) the usefulness of the jury as a device that insulates the citizenry from government overreaching and (2) the utility for the society of a requirement for average citizens to participate in dispute resolution and to confront head-on the truly difficult social problems posed by crime. In the past, these aspects of the jury system were considered beyond valuation by those with an immediate sense of the tenuous nature of individual freedom.

We have a right to change our collective mind about the jury system. But it is questionable whether we will exercise that right as long as we are reminded from time to time (as we have been reminded over the last decade) of the danger of allowing government processes to be conducted out of sight and beyond the comprehension of the ordinary citizen.

> Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The framers of the constitutions strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. . . . Beyond this, the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence.[31]

■

[30] H. Kalven, "The Dignity of the Civil Jury," *Virginia Law Review,* vol. 50, p. 1055 (1964).

[31] Justice J. White, in *Duncan* v. *Louisiana,* 391 U.S. 145, 156 (1968).

AMERICAN PRISONS AND JAILS

(Continued from page 268)

ber of persons had been confined during FY 1969, the per inmate cost would have been $2,016.

The direct current expenditure of the Federal Bureau of Prisons for FY 1974 was $130,608,000. These expenditures relate to the 22,815 federal inmates on January 1, 1974: average cost, $5,725.

Despite rhetoric about rehabilitation in corrections, correctional facilities are staffed primarily to discharge their mission to confine inmates securely. This was true in 1967, as indicated by Table 4, and it was true in 1974. In 1974, there were 95,900 state workers in institutions, of whom 29,300 were in institutions for juveniles. Custodial personnel in adult institutions totaled 37,900, or 56.9 percent. (It must be recognized, however, that security is a 24-hour function, while education and other activities are not.) At the level of the jail, 48.3 percent of all employees in 1972 were line officers. Treatment and training staff was less than 5 percent. (See Table 5.)

TABLE 4: Full-Time Staff Employed in State and Federal Correctional Institutions, 1967

Occupational Group	Adult Institutions	
	Number	Percent
All offenders confined	214,024	—
All full-time staff	53,868	100.0
Administration	3,715	6.9
Treatment and training	6,828	12.7
Education	2,108	3.9
Medical	1,771	3.3
Other special services	2,949	5.5
Line officers	33,608	62.4
Farm and food service	2,730	5.1
Maintenance	3,394	7.3
Prison industries	2,639	4.9
All other	414	0.8

TABLE 5: Total and Full-Time Jail Employees, 1972

Occupational Group	All Jails	
	Number	Percent of Full-time employees
All offenders confined	141,588	
All full-time staff	39,627	89.5
Administrative	12,107	
Full-time	11,188	28.2
Custodial	20,338	
Full-time	19,127	48.3
Clerical/maintenance	7,439	
Full-time	6,673	16.8
Academic teacher	367	
Full-time	177	0.4
Vocational teacher	209	
Full-time	144	0.4
Social worker	487	
Full-time	321	0.8
Psychologist	137	
Full-time	69	0.2
Psychiatrist	166	
Full-time	45	0.1
Medical doctor	1,063	
Full-time	366	0.9
Nurse	747	
Full-time	592	1.5
Other	1,239	
Full-time	925	2.3

The foregoing data raise more questions than they provide answers. Combined with data (not presented here) on crime rates, sentencing practices, probation, parole, and the experience of other countries, the available data indicate the need to reexamine fundamental assumptions about corrections in the United States. How these questions are posed and how well and quickly they are answered are important issues deserving the attention of all citizens. ■

DATA SOURCES

Bureau of Census, U.S. Department of Commerce, *1970 Census of Population, Subject Report: Persons in Institutions and Other Group Quarters; 1974 Statistical Abstract of the United States.*

Committee on the Judiciary, U.S. House of Representatives, *Prison Construction Plans and Policy,* Ser. #16 (1975).

Joint Commission on Correctional Manpower and Training, *Manpower and Training in Correctional Institutions* (1969).

Law Enforcement Assistance Administration, U.S. Department of Justice, *1970 National Jail Census: 1972 Survey of Inmates of Local Jails—Advance Report; The Nation's Jails; 1974 Census of State Correctional Facilities; Prisoners in State and Federal Institutions* (on December 31, 1971, 1972, and 1973); *Expenditure and Employment Data for the Criminal Justice System,* 1974.

National Advisory Commission on Criminal Justice Standards and Goals, *Report on Corrections* (1973).

National Council on Crime and Delinquency, *Correction in the United States* (1966).

CRIMINAL JUSTICE IN THE AMERICAN DEMOCRACY

(Continued from page 244)

other charge that they improve, deter or rehabilitate their inmates is a subject of much debate.

This brief review of our chief instruments of criminal justice has had two aims: to supply a general descriptive background against which to read the other articles in this *Current History* symposium, and to stress the fact that the delivery of criminal justice is a task assigned largely to local governments. Because local governments seldom establish stringent qualifications for public office-holding, and because in local government personnel is likely to be affiliated with local political bodies and through these to the electorate itself, in our criminal justice system plain Americans of modest talent administer justice to their fellows. Painfully burned by the brand of British tyranny, Americans early assured themselves that justice should be forever in the province of ordinary people.

Forever is a long time. But so are 200 years. ■

THE MONTH IN REVIEW

A CURRENT HISTORY chronology covering the most important events of April, 1976, to provide a day-by-day summary of world affairs.

INTERNATIONAL

Conference of Latin American Leaders

Apr. 1—The Conference of Latin American Leaders scheduled for June 22 in Panama is officially canceled "due to the political conditions that currently exist."

European Economic Community (Common Market)

Apr. 2—The leaders of the 9 Common Market countries conclude their spring meeting in Luxembourg without making any joint declarations, indicating wide disagreement on economic matters.

Apr. 6—Meeting in Luxembourg, the Common Market foreign ministers agree to give $27.5 million to Zaire, Zambia and Malawi to help cover losses the countries suffered during the Angolan civil war.

European Free Trade Association

Apr. 11—6 members of the European Free Trade Association establish a $100-million fund to aid Portugal's industrial development; Sweden will contribute 30 percent and Switzerland will contribute 25.5 percent of the total.

International Terrorism

Apr. 14—3 Philippine Muslims, who hijacked a Philippine Airlines plane as it flew over the Philippines on April 7, release their 12 hostages and surrender to Libyan officials at Benghazi, Libya; the 3 men are members of a Muslim separatist group, the Moro Liberation Front.

United Nations

Apr. 1—U.S. member of the United Nations Human Rights Commission Leonard Garment charges that the coalition of Soviet-bloc and third world countries twists resolutions and silences protests, making a "mockery" of sessions of the Rights Commission.

Apr. 5—The U.N.-accredited International League for the Rights of Man protests that in spite of information given the U.S. State Department by the League (detailing evidence of torture, mass arrests and the threatened extinction of Indian populations in Paraguay), the State Department ignores the information and continues to picture Paraguay in favorable terms while supplying aid.

Apr. 6—The U.N. Security Council unanimously agrees to broaden its international sanctions against the white minority government of Rhodesia; in addition to the trade embargoes in force since 1968, insurance and commercial licensing operations beneficial to Rhodesia are now barred.

Apr. 13—United Nations sources report that none of the parties in the Middle East dispute, including the U.S.S.R. and the U.S., have responded to U.N. Secretary General Kurt Waldheim's call to reactivate the peace-negotiating process.

Apr. 22—The Security Council votes 12 to 0 with 3 abstentions to denounce continued Indonesian occupation of the defunct Portuguese colony of Eastern Timor; it asks Indonesia to remove her forces "without delay."

ANGOLA

(See also *Zambia*)

Apr. 3—The U.S. Gulf Oil Corporation says that it will resume its oil operations in Angola "as soon as possible."

ARGENTINA

Apr. 5—Minister of the Economy José Martínez de Hoz announces the end of price controls and the relaxation of the government's policy of nationalizing foreign investments.

Apr. 17—In Buenos Aires, 3 extremists are killed in battles with police. Nearly 118 people have been killed since the armed forces took over from President Isabel Martínez de Perón last month.

Apr. 24—The military government orders all local newspapers to refrain from reporting terrorist activities unless they are disclosed by the government.

BULGARIA

Apr. 2—Todor Zhivkov is reappointed as head of the Communist party for 5 more years.

BURMA

(See *Cambodia*)

CAMBODIA

Apr. 5—Prince Norodom Sihanouk resigns his figurehead position as Head of State. The Cabinet accepts his resignation.

Apr. 14—Information and Propaganda Minister Hu Nim announces the appointment of Khieu Samphan as "Chairman of the State Presidium"; he succeeds Sihanouk as Head of State. Tol Saut is named Prime Minister. Ieng Sary will remain

Deputy Prime Minister in charge of foreign affairs and Son Sen will remain Deputy Prime Minister for national defense.

Apr. 26—The Chinese press agency Hsinhua reports that Cambodia and Burma have established diplomatic relations.

CANADA

Apr. 9—In an address to the House of Commons, Prime Minister Pierre Elliott Trudeau proposes an amendment to the constitution to make it a Canadian document rather than a statute of the British Parliament.

CHAD

Apr. 13—In Ndjamena, President Felix Malloum survives a grenade attack during a military parade in which 4 people are killed and 72 injured.

CHINA

(See also *India; U.S.S.R.*)

Apr. 5—In Peking's Tien An Men Square, an estimated 30,000 demonstrators attempt to force their way into the Forbidden City. The demonstrations erupted when officials removed the wreaths that had been placed to commemorate the late Chou En-lai.

Apr. 6—The government sends militiamen into Peking to maintain the peace.

Apr. 7—Deputy Prime Minister Teng Hsiao-ping is removed from his posts as deputy chairman of the party, First Deputy Prime Minister and chief of staff of the armed forces; Hua Kuo-feng is appointed as Prime Minister and first deputy chairman of the Communist party.

Apr. 9—Foreign Minister Chiao Kuan-hua and other government officials lead demonstrations of more than 100,000 people supporting the dismissal of Teng Hsiao-ping.

Apr. 17—Peking Radio reports the dismissal of Defense Minister Yeh Chien-ying.

Apr. 19—In Peking, officials from 7 Soviet-bloc countries boycott a party held in honor of Egyptian Vice President Husni Mubarak. At the banquet, Prime Minister Hua Kuo-feng makes his 1st public speech since assuming his present office.

Apr. 21—In Peking, Chinese and Egyptian officials sign a military protocol that allows for the Egyptian purchase of Chinese military equipment.

Apr. 26—Members of the so-called "radical faction," including Chairman Mao Tse-tung's wife, Chiang Ching, make their first public appearance since the ouster of Teng Hsiao-ping.

Apr. 28—The Communist party newspaper *Jenmin Jih Pao* continues to carry articles denouncing former Deputy Prime Minister Teng.

Apr. 29—The Soviet press agency Tass reports that a bomb exploded at the entrance of the Soviet embassy in Peking; the blast reportedly killed 2 Chinese guards.

COLOMBIA

Apr. 18—Nationwide elections are held for state assemblies and municipal councils.

Apr. 20—Election returns show the governing coalition of Liberal and Conservative parties winning overwhelming support. Only 20 percent of the total voting population voted.

CUBA

(See *Portugal*)

CYPRUS

Apr. 6—In Nicosia, demonstrators protesting the resumption of U.S. military aid to Turkey attack the U.S. embassy.

Apr. 17—The government terms the latest Turkish Cypriot peace proposals "unacceptable," claiming that they "do not contain any concrete proposals."

CZECHOSLOVAKIA

Apr. 12—In Prague, Communist party leader Gustav Husak addresses the opening session of the 15th Congress of the Czechoslovak Communist party.

Apr. 16—Husak is renominated to serve 5 more years as party leader.

EGYPT

(See also *China; U.S.S.R.*)

Apr. 4—President Anwar Sadat leaves on a 5-nation European tour; he is seeking economic and military aid.

Apr. 18—War Minister Lieutenant General Mohammed Abdel Ghany el-Gamasy returns from Romania where he has been purchasing arms and spare parts for military equipment Egypt bought from the Soviet Union.

FRANCE

Apr. 15—In Paris, tens of thousands of university students march through the city protesting changes made in university admissions policies and curriculum. More than 200 protestors are arrested by Paris police.

GERMANY, FEDERAL REPUBLIC OF (West)

(See also *U.S., Labor and Industry*)

Apr. 4—In Baden-Würtemberg, in the last state election before the October 3 national elections, the Social Democratic party of Chancellor Helmut Schmidt is defeated by the conservative Christian Democratic Union, which wins 56.7 percent of the vote.

GHANA

(See *U.S., Foreign Policy*)

GREECE

Apr. 15—The U.S. and Greek governments sign an agreement providing for the U.S. use of bases in Greece and for $700 million in U.S. aid for Greece.

Apr. 17—Prime Minister Constantine Caramanlis proposes to Congress that Greece and Turkey end their arms race and sign a nonaggression treaty.

INDIA

Apr. 15—External Affairs Minister Y. B. Chavan announces that for the 1st time in 15 years India will send an ambassador to China. China is expected to reciprocate.

India and the U.S.S.R. sign a 5-year trade agreement.

Apr. 16—The government makes public its birth control program; it calls for raising the minimum marriage age and paying more money to those who voluntarily have themselves sterilized. Although the government program does not call for nationwide compulsory sterilization, it does not prohibit individual states from requiring sterilization for people who have two or more children.

Apr. 19—Prime Minister Indira Gandhi offers to resume discussions about reestablishing diplomatic relations with Pakistan. India and Pakistan severed diplomatic relations in 1971.

Apr. 28—In a 4-to-1 decision, the Supreme Court rules that in a state of emergency the government has the right to suspend indefinitely the right of habeas corpus. Thousands of political prisoners are awaiting trial.

INDONESIA

(See *Intl, U.N.*)

ISRAEL

(See also *U.S., Administration, Foreign Policy*)

Apr. 4—The Cabinet endorses police behavior in the rioting last week in Galilee.

Apr. 9—South African Prime Minister John Vorster arrives in Jerusalem for a 4-day visit with government officials.

Apr. 12—At the end of his 4-day visit, Prime Minister Vorster announces the signing of a joint economic agreement between Israel and South Africa, to promote "joint utilization of South African raw materials and Israeli manpower."

Municipal elections are held in the Israeli-occupied West Bank of the Jordan River.

Apr. 13—Election results show the Communists, Syrian Baathists and supporters of the Palestine Liberation Organization winning the majority of municipal offices in yesterday's election.

Apr. 18—Nearly 30,000 Israeli nationalists parade through the Israeli-occupied area of the West Bank to demonstrate their determination to remain.

Apr. 21—For the 4th day, Arab demonstrations against the presence of Jewish settlements continue in the West Bank.

ITALY

Apr. 10—Communist party leader Enrico Berlinguer calls for an "entente" with the governing Christian Democrats and the Communist party.

Apr. 12—The lira falls to a record low against the U.S. dollar; the rate is now 900 lira to the U.S. dollar.

Apr. 21—Giovanni Theodoli, the president of the Italian Oil Producers Association, is shot and seriously wounded by terrorists. An extreme left-wing group, the Armed Communist Unit, takes credit for the shooting.

Apr. 22—Italian newspapers report that one of three former Prime Ministers (all of whom belong to the Christian Democratic party) is involved in the U.S. Lockheed Aircraft Corporation bribery scandal.

Apr. 24—The Christian Democrats announce their intention to seek a vote of confidence in Parliament next week.

Apr. 30—Prime Minister Aldo Moro's Cabinet resigns.

JAPAN

Apr. 14—The Supreme Court declares the nation's parliamentary election procedures unconstitutional because equal representation for voters is not assured and each vote is not of equal weight.

Apr. 20—Railroad workers begin a 3-day transit strike; the workers are demanding wage increases of 10 percent or more.

Apr. 22—Opposition party members end a 43-day boycott of Parliament over the Lockheed scandal.

KENYA

(See *U.S., Foreign Policy*)

KOREA, DEMOCRATIC REPUBLIC OF (North)

Apr. 30—The North Korean radio announces that the 5th Supreme People's Assembly has named Deputy Prime Minister Pak Sung Chul Prime Minister to succeed Kim Il, who has been appointed "first deputy chairman" of the Communist party.

LAOS

Apr. 11—Minister of Information Sisana Sisan says that the arrest of hundreds of people in the last 48 hours is "intended to teach city dwellers how to follow the Communist revolutionary line," according to the Laos radio.

Apr. 14—"Social undesirables" and soldiers sympa-

thetic to the defeated rightist government are arrested.

LEBANON

Apr. 2—A 10-day truce (designed to give Parliament time to elect a new President to replace Suleiman Franjieh) begins, although fighting continues.

Apr. 5—Kamal Jumblat, leader of the Muslim left alliance, accuses Syria of stationing troops in Lebanese ports to prevent arms shipments to the Muslims.

Apr. 6—Kamal al-Assad, speaker of Parliament, announces a Parliament meeting place so Parliament can begin deliberations to choose a new President.

Apr. 10—Members of Parliament vote unanimously to approve an amendment to the constitution that permits Parliament to select a new President before President Franjieh's term expires in September.

Syrian troops, estimated at between 2,000 and 4,000 men, reportedly have crossed into Lebanon, capturing the hillside village of Masnaa.

Apr. 12—Jumblat decides to extend the truce until the end of the month.

Apr. 15—Despite the cease-fire, increased fighting breaks out in Beirut.

Apr. 16—Syrian President Hafaz al-Assad and Palestine Liberation Organization leader Yasir Arafat announce an agreement on a program to end the civil war.

Apr. 24—President Franjieh signs the constitutional amendment that permits Parliament to select a new Head of State.

Apr. 28—Elias Sarkis, head of the Central Bank, announces his candidacy for President in the election by members of Parliament.

LIBYA

(See *U.S.S.R.*)

MALAWI

(See *Intl, EEC*)

NIGERIA

(See also *U.S., Foreign Policy*)

Apr. 20—The U.S. and Nigeria agree to share any information concerning illegal payments by the U.S. Lockheed Aircraft Corporation in Nigeria.

PAKISTAN

(See *India*)

PANAMA

(See *U.S., Foreign Policy*)

PARAGUAY

(See *Intl, U.N.*)

PHILIPPINES, THE

(See also *Intl, Intl Terrorism*)

Apr. 1—In a just-released book, former President Diosdado Macapagal denounces the government of President Ferdinand E. Marcos as an illegal dictatorship. Macapagal applies for political asylum in the United States but is refused by the State Department in Washington, D.C.

PORTUGAL

(See also *Intl, EFTA*)

Apr. 4—The campaign for the April 25th parliamentary elections officially opens.

Apr. 7—The government publishes a new foreign investment code to encourage foreign business.

Apr. 8—In Geneva, the Swiss government expels former Portuguese President General António de Spínola because he engaged in political activity while in Switzerland.

Apr. 22—The Cuban Embassy in Lisbon is damaged when a bomb explodes on the 7th floor. 2 Cubans are killed and 4 people are wounded.

Apr. 25—Parliamentary elections are held throughout the country.

The new constitution takes effect.

Apr. 26—Socialist leader Mário Soares claims "indisputable victory" for the Socialists in yesterday's elections. The Socialists won 106 of the 263 seats in the National Assembly; they are 26 seats short of a majority.

Apr. 30—The government and the military Council of the Revolution approve provisional legislation setting up the Autonomous Regions of the Azores and Madeira and indicate they will permit the continuing U.S. presence in the Azores.

RHODESIA

(See also *Intl, U.N.; U.S., Foreign Policy*)

Apr. 19—178 miles of the Fort Victoria-Beitbridge Road are sealed off after 3 white South African motorcyclists are killed by black nationalist guerrillas.

A section of the rail line to South Africa is blown up.

Apr. 26—The government imposes press, radio and television censorship.

Apr. 28—Four black tribal chiefs are sworn in as Cabinet members of the formerly all-white Cabinet. 3 black deputy ministers are appointed.

African nationalists denounce the appointments as meaningless gestures.

ROMANIA

(See *Egypt*)

SOUTH AFRICA

(See also *Israel*)

Apr. 26—The government establishes full diplomatic relations with Taiwan.

SPAIN

Apr. 4—In Madrid, police arrest nearly 200 demonstrators who are protesting the government's ban against demonstrations.

Apr. 7—The government agrees to pension disabled civil war veterans, who fought against Franco 40 years ago.

Apr. 22—Government guarantees of minimum working conditions take effect today.

Apr. 28—In a televised address, Prime Minister Carlos Arias Navarro announces that a referendum on proposed constitutional amendments will be held in October, 1976; general elections will be held in early 1977.

SWEDEN

(See *Intl, EFTA*)

SWITZERLAND

(See *Intl, EFTA; Portugal*)

TAIWAN

(See *South Africa*)

TANZANIA

(See also *U.S., Foreign Policy*)

Apr. 26—In Dar es Salaam, President Julius K. Nyerere meets with U.S. Secretary of State Henry A. Kissinger.

THAILAND

Apr. 4—Parliamentary elections are held; these are the 2d general elections in less than a year.

Apr. 5—Election returns show that Prime Minister Kukrit Pramoj has been defeated in his bid for reelection to the National Assembly.

The Democratic party (the opposition party) receives 114 of the 279 seats in the Assembly; the party is 26 seats short of a majority. Party leader Seni Pramoj will become Prime Minister.

Apr. 16—King Bhumibol Adulyadej addresses the opening session of Parliament.

It is reported that the Democratic party has formed a coalition government with 3 other parties.

Prime Minister Seni Pramoj's Cabinet is approved by Parliament.

Apr. 19—Uthai Pimchaichon, a member of the Democratic party, is elected Speaker of Parliament.

Apr. 21—King Aduldet officially appoints the new government of Prime Minister Seni Pramoj.

U.S.S.R.

(See also *Intl, U.N.; China; India; U.S., Foreign Policy; Yugoslavia*)

Apr. 4—Visiting in Paris, Egyptian President Anwar Sadat says that his government has canceled the Soviet navy's right of access to Egypt's Mediterranean ports. According to Sadat, Libya's President Muammar el-Qaddafi has ordered $11 billion in arms from the Soviets.

Apr. 8—An article appearing in *Pravda,* the Communist party newspaper, warns against any military intervention by the U.S. in Lebanon.

Apr. 15—Two Soviet dissidents are convicted of anti-Soviet slander. One is sentenced to two and one-half years in a labor camp and the other to 5 years in internal exile.

Apr. 18—An article in *Pravda* says that U.S. Secretary of State Henry A. Kissinger's remarks that the U.S. cannot support a country that permits Communists in its government violates the Helsinki agreement.

Apr. 26—Marshal Andrei Antonovich Grechko, Defense Minister since 1967, dies suddenly at the age of 72.

Apr. 28—The government calls for a resumption of the Geneva peace talks on the Middle East.

An article in *Pravda* proposes the resumption of border talks between the Soviet Union and China.

Apr. 29—Dmitri F. Ustinov, a civilian in charge of the military industrial complex, is named to replace the late Andrei A. Grechko as minister of defense.

UNITED KINGDOM

Great Britain

Apr. 5—Foreign Secretary James Callaghan is elected by Labor party members to succeed Harold Wilson as Prime Minister.

Apr. 6—Chancellor of the Exchequer Denis Healey delivers the annual budget message to Parliament; the government calls for adherence to Wilson's anti-inflationary policies.

Apr. 8—Callaghan announces his Cabinet; Anthony Crosland is named foreign secretary.

Apr. 14—The government announces a March balance-of-payments surplus of $186 million.

Northern Ireland

Apr. 5—In Belfast, 7 bombs explode, damaging 2 hotels and department stores.

Apr. 25—In commemoration of the 60th anniversary of the 1916 Easter uprising, Irish Republican Army supporters defy a government ban on demonstrations and march through the streets of Dublin.

UNITED STATES

Administration

Apr. 7—In a letter to House Speaker Carl Albert (D., Okla.), President Gerald Ford says that the $2.2 billion in aid for Israel already approved for fiscal 1976 and the $1.8 billion proposed for fiscal 1977 "are adequate to enable Israel to maintain its security"; the President says that if additional

funds are appropriated, "I will be forced to exercise my veto."

Apr. 9—In a lengthy report after a 2-year study, the Nuclear Regulatory Commission concludes that the Public Service Electric and Gas Company of New Jersey should be granted a construction permit for a floating nuclear power plant 2.8 miles off the coast near Atlantic City, New Jersey.

Apr. 13—In an executive order, President Ford directs the Interior Secretary to set up a management authority and an endangered species scientific authority to oversee American conservation efforts.

Speaking in Washington, D.C., President Ford says that the federal government should try to preserve the country's "ethnic treasure"; ". . . I don't think that federal action should be used to destroy that ethnic treasure."

Apr. 19—United States Commissioner of Education, Terrel H. Bell, resigns his post, effective August 1.

Apr. 21—The Justice Department rules that in order to comply with the 1975 amendments to the Voting Rights Act of 1965, 513 jurisdictions in 30 states must hold elections in more than one language.

Apr. 22—In a Washington, D.C., interview reporting on the results of his 7-nation trip to 4 continents, Vice President Nelson Rockefeller says that the countries he visited appreciate "the need for a strong, determined United States foreign policy."

Presidential press secretary Ron Nessen announces that Deputy Director of the Central Intelligence Agency Lieutenant General Vernon Walters has resigned.

Apr. 28—The Department of Agriculture announces that the U.S.S.R. is purchasing more than $400-million worth of American grain from 3 large American grain trading companies.

Civil Rights

Apr. 15—Under the terms of the 1974 amendments to the Fair Housing Act of 1968, the Justice Department charges 2 mortgage lending institutions, Jefferson Mortgage Corporation of New Jersey and Prudential Federal Savings Association of Utah, with discrimination against women.

Apr. 16—In suit filed in federal district court in Chicago, the Justice Department charges the nation's major real estate appraisal and lending institutions with using "racially discriminatory" standards in appraising real estate and in lending for housing in integrated areas; the 4 major national real estate organizations and mortgage bankers' associations are named as defendants.

Apr. 22—In a bomb explosion in the Suffolk County Courthouse in Boston, 21 persons are injured; according to their statements, police do not believe that the explosion was related to the racial tension caused by court-ordered busing for integration.

Apr. 23—Led by Boston Mayor Kevin White, thousands of people march in a "Procession Against Violence" over a half-mile route through the center of Boston.

Apr. 30—In Buffalo, N.Y., a federal district court judge rules that Buffalo's public schools have been intentionally segregated by race; he orders city and state officials to begin preparing an integration plan.

Economy

Apr. 2—The Labor Department reports a national employment rise of 375,000 in March, to a record 86.7 million, and a lowering of the unemployment rate from February's 7.6 percent to 7.5 percent.

Apr. 19—The Commerce Department reports a 7.5 percent rise in the gross national product (GNP) for the first quarter of 1976, with an inflation rate reduced to 3.7 percent, the lowest rate since 1972.

Apr. 26—The country's 9th largest steel producer, the Wheeling-Pittsburgh Steel Corporation, announces an increase of about 8 percent in the price of flat-rolled steel it produces.

The Commerce Department reports a trade deficit in March of $650 million; this is the largest trade deficit in the last 18 months.

Apr. 29—The U.S. Steel Corporation announces a 6 percent increase in its prices on sheet and strip products; Armco Steel follows. Inland Steel announced a 6 percent price increase Apr. 27.

Foreign Policy

(See also *Intl, U.N.; Greece; Nigeria*)

Apr. 4—In an address to the American Jewish Congress in Washington, D.C., Secretary of State Henry Kissinger says that U.S. support for Israel will not be weakened in any manner and that the U.S. "will never abandon Israel."

Apr. 5—According to *The New York Times,* Secretary of State Kissinger's chief adviser, Helmut Sonnenfeldt, told a meeting of U.S. European ambassadors in December, 1975, in London that "it must be in our long-term interest to influence events in this area [East Europe] because of the present unnatural relationship with the Soviet Union."

Apr. 7—In an announcement from Lagos, Nigeria, the Nigerian government cancels an invitation to U.S. Secretary of State Henry Kissinger to visit Nigeria on May 2 on his African tour.

Apr. 9—Secretary of State Kissinger describes the text of a treaty with the U.S.S.R. that limits the size of underground nuclear blasts for peaceful purposes to a force of 150 kilotons; the treaty also contains provisions for on-site inspections of this type of explosion.

Apr. 13—Speaking to the American Society of News-

paper Editors in Washington, D.C., Secretary of State Kissinger says: "I believe the advent of Communists in West European countries is likely to produce a sequence of events in which other European countries will also be tempted to move in the same direction."

Apr. 14—Speaking of the negotiations with Panama over the future of the Panama Canal, Ron Nessen, President Ford's press secretary, says that "no treaty will be agreed to unless it safeguards United States interest in the Canal and guarantees our interest in the operation and defense of the Canal."

Apr. 23—Henry Kissinger leaves for a 2-week tour of 7 African countries. Stopping first in London, he plans to visit Kenya, Tanzania, Zambia, Zaire, Ghana, Liberia and Senegal and return by way of France.

Apr. 25—Secretary of State Kissinger meets with Kenya's President Jomo Kenyatta in Nakuru, Kenya; later in the day, he flies to Dar Es Salaam, Tanzania, to meet with Tanzanian President Julius K. Nyerere.

Apr. 27—Speaking in Lusaka, Zambia, Secretary of State Kissinger says he will urge Congress to repeal the amendment sponsored in 1971 by Senator Harry F. Byrd, Jr. (Ind., Va.). The admendment permits the import of Rhodesian chrome, in spite of U.N. sanctions against such action. Kissinger also proposes that the U.S. act to force the acceptance of majority rule by the white minority government of Rhodesia.

Apr. 28—The Ghanaian government cancels the proposed visit of U.S. Secretary of State Henry Kissinger scheduled for April 29. The poor health of General Ignatius Acheampong, Ghana's Head of State, is given as the reason for the cancellation.

Labor and Industry

Apr. 1—The Consolidated Rail Corporation (CONRAIL) takes over the operation and properties of 7 bankrupt Northeast railroads, the largest of which is the Penn Central. The corporation was formed by the United States Railway Association under terms of the Regional Rail Reorganization Act of 1973.

Two-thirds of the nation's truckers strike.

Apr. 3—The nationwide trucking strike is settled; the men return to work.

Apr. 14—The Internal Revenue Service assesses the Associated Milk Producers Inc. $7.8 million in unpaid taxes and fraud penalties for fiscal years 1972 and 1973; in 1974, the corporation pleaded guilty to disbursing $280,900 in illegal political contributions to both major parties.

Apr. 21—Members of the United Rubber Workers union strike.

Apr. 23—West Germany's Volkswagenwerk A. G. agrees to produce its Rabbit model car in the U.S. as soon as a suitable plant is procured.

Apr. 30—United Air Lines signs a consent decree in Chicago agreeing to pay $1 million in back pay to settle a lawsuit originally brought by the Equal Opportunity Commission on behalf of women and minority employees. An unspecified number of people will receive the money; retroactive seniority will also be awarded.

Legislation

Apr. 6—President Gerald Ford vetoes a bill that would have given the states $125 million for federally aided day care centers; the money would have been used to upgrade the centers to meet new federal standards.

Apr. 9—President Ford signs a municipal bankruptcy act that makes it easier for financially pressed cities to petition for bankruptcy; the law was passed by the Senate 79 to 19, and by the House 373 to 29.

Apr. 12—President Ford vetoes an amendment to the Hatch Act of 1939; the amendment would have permitted 2.8 million federal civil servants to seek public office or to support candidates.

Apr. 13—House and Senate conferees reach agreement on changes in the Campaign Reform Act of 1975; the measure cannot be passed before Congress returns from Easter recess.

President Ford signs a law that extends the United States fisheries limit to 200 miles offshore.

President Ford pledges never to resort to a pocket veto, averting a lawsuit filed by Senator Edward Kennedy (D., Mass.) that challenged the legality of the pocket veto.

Apr. 26—The Senate Select Committee on Intelligence Activities (the Church committee) concludes its 15-month investigation and issues its report; it urges strict government control of intelligence-gathering agencies and a limit on the use of covert actions as an instrument of foreign policy.

Apr. 27—President Ford asks Congress to enact an "aggressive" new program to combat narcotics, including minimum mandatory sentences for drug traffickers.

Apr. 28—The Senate Select Committee on Intelligence issues a summary of its 15-month investigation into government spying in this country; the committee condemns the Federal Bureau of Investigation and other investigative agencies for exercising illegal investigative power for the wrong reasons or without reasons, for using illegal tactics, and for acting without the oversight of either the President or the Attorney General. The 11 members of the committee conclude that "fundamental reform" is needed in the domestic intelligence community.

The House votes 215 to 185 and the Senate votes

51 to 35 to pass the $4.4-billion foreign aid authorization bill, covering the fiscal year ending June 30. The bill goes to President Ford.

Apr. 29—The House sustains the President's veto of the Hatch Act amendment.

Politics

Apr. 3—In the Kansas statewide Democratic delegate selection caucuses, former Georgia Governor Jimmy Carter wins 38.2 percent of the delegates; Senator Henry Jackson (D., Wash.) wins 7.1 percent; 47 percent of the delegates are elected on an uncommitted basis.

Apr. 6—At a news conference in South Bend, Indiana, Jimmy Carter says that as President he would not "use the federal government's authority deliberately to circumvent the natural inclination of people to live in ethnically homogeneous neighborhoods." He believes that the federal government should not try to alter a neighborhood's "ethnic purity."

Senator Henry Jackson (D., Wash.) wins the Democratic presidential primary in New York State; President Ford defeats former California Governor Ronald Reagan in the Republican primary; in Wisconsin, former Governor Jimmy Carter defeats Senator Morris Udall (D., Ariz.) by 7,386 votes in the Democratic presidential primary; President Ford again defeats Ronald Reagan in the Republican primary.

Apr. 8—Former Oklahoma Senator Fred Harris says he will end his "national effort" as a candidate for the Democratic presidential nomination.

Apr. 19—Senator Henry Jackson wins approximately 60 percent of the delegates to his home state of Washington's state Democratic convention; Morris Udall wins 6.5 percent.

Apr. 25—Udall wins the Democratic presidential primary in his home state of Arizona. Ronald Reagan captures 27 of the 29 Republican delegates in that state.

Apr. 27—Jimmy Carter wins the popular vote in the Democratic primary in Pennsylvania with 37 percent of the vote.

Senator Henry Jackson receives 25 percent of the total vote; Morris Udall comes in 3d and Alabama Governor George Wallace takes 4th place in the voting.

Apr. 29—At a news conference in Washington, D.C., Senator Hubert Humphrey (D., Minn.) announces that he will not enter the New Jersey primary, nor will he authorize a committee to raise funds for a campaign for his candidacy.

Supreme Court

Apr. 5—The Supreme Court refuses to review the court-martial conviction of former Army Lieutenant William Calley, Jr., who was convicted of the murder of 22 civilians in My Lai, South Vietnam, in 1968.

Apr. 19—The Supreme Court rejects without comment a request for expeditious consideration of a lower court ruling that denied Morris Udall (D., Ariz.) a place on the ballot in the Indiana May 4 presidential primary because he did not have the necessary supporting signatures in one district.

Apr. 20—The Supreme Court rules by an 8-to-0 margin that federal courts may order minority low-cost public housing in the white suburbs of a city even when the suburbs have not been guilty of racially discriminatory housing practices; the Department of Housing and Urban Development can be ordered to provide the housing.

Apr. 21—By a 7 to 2 vote, the Court rules that banks can be subpoenaed to supply previously secret customer records in cases of government prosecution of a bank's customer.

Apr. 26—The Supreme Court upholds a federal district court ruling upholding the constitutionality of the Indiana law requiring a candidate to have the necessary number of supporting signatures from each of the voting districts to qualify for a place on the ballot.

Apr. 27—In a unanimous decision, the Court rules that Indian tribes may challenge state taxes on Indian and reservation property in a federal court instead of in a state court.

VIETNAM

Apr. 25—Elections for 492 seats in the National Assembly are held in North and South Vietnam; these are the 1st country-wide assembly elections to be held since 1946.

Apr. 26—Radio broadcasts report a 99 percent voter turnout in some sections. 249 deputies have been chosen in the North and 243 in the South; all candidates had been preselected by revolutionary committees. The assembly will meet within 60 days.

YUGOSLAVIA

Apr. 5—It is reported that a Soviet national working in Yugoslavia has been held for 2 months on charges of spying for the Soviet government.

ZAIRE

(See *Intl, EEC*)

ZAMBIA

(See also *Intl, EEC; U.S., Foreign Policy*)

Apr. 15—The government officially recognizes the Luanda-based government in Angola.

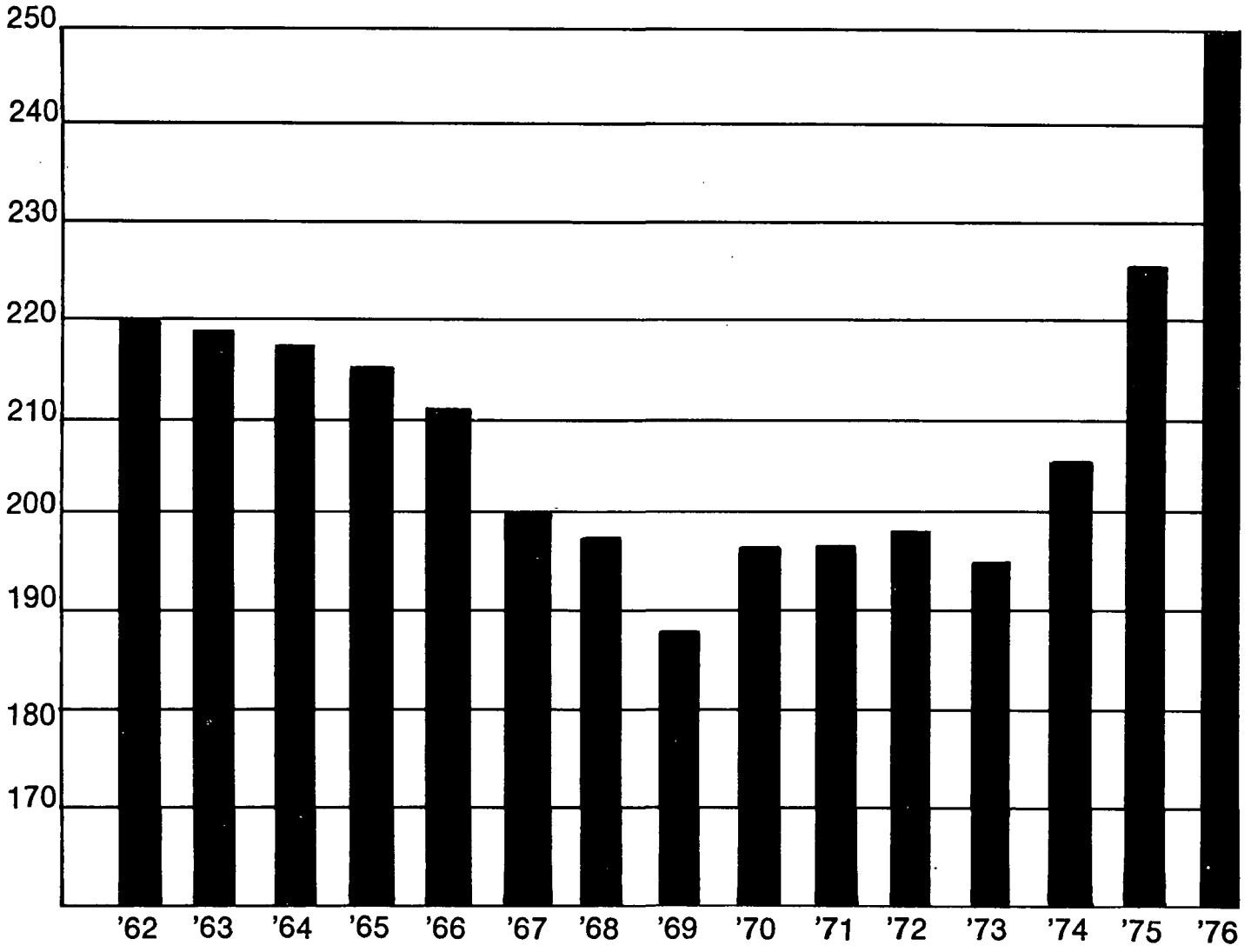
Current History Index, January-June, 1976
Volume 70, Numbers 412-417

SUBJECTS

AUTHORS

TOTAL POPULATION OF U.S. STATE AND FEDERAL PRISONS—1962-1976

Figures are in thousands—as of January 1.



LEAA figures for '69, '70, '71 do not include certain states.

Figures from 1962-1974 from LEAA; 1975-1976 figures from *Corrections Magazine* survey.

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